STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

SBC COMMUNICATIONS INC.,	**:**	
SBC DELAWARE INC.,	**:**	
AMERITECH CORPORATION,	**:**	
ILLINOIS BELL TELEPHONE COMPANY	**:**	
d/b/a AMERITECH ILLINOIS, and	**:**	
AMERITECH ILLINOIS METRO, INC.	**:**	
	:	**98-0555**
Joint Application for approval of the	**:**	
reorganization of Illinois Bell Telephone	**:**	
Company d/b/a Ameritech Illinois, and the	**:**	
reorganization of Ameritech Illinois Metro,	**:**	
Inc. in accordance with Section 7-204 of the	**:**	
Public Utilities Act and for all other	**:**	
appropriate relief.	**:**	

HEARING EXAMINERS' PROPOSED ORDER ON REOPENING

August ~~10~~17, 1999

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HEARING EXAMINERS' PROPOSED ORDER ON REOPENING

By the Commission:

I. Introduction and Procedural History

On July 24, 1998, SBC Communications Inc. ("SBC"), SBC Delaware Inc., Ameritech Corporation ("Ameritech"), Illinois Bell Telephone Company d/b/a Ameritech Illinois ("Ameritech Illinois," "AI," or "Company"), and Ameritech Illinois Metro, Inc. ("AIM") (collectively "Joint Applicants") filed a verified Joint Application seeking this Commission's approval, under Section 7-204 of the Illinois Public Utilities Act ("PUA" or the "Act") of the "reorganization" of Ameritech Illinois and AIM resulting from a proposed business combination of SBC and Ameritech.

SBC is a Delaware corporation with its corporate headquarters located in San Antonio, Texas. SBC is a holding company whose subsidiaries include Southwestern Bell Telephone Company ("SWBT"), Pacific Bell, Nevada Bell, and Southern New England Telephone Company ("SNET"), each of which is an incumbent local exchange carrier ("ILEC"). SBC also has subsidiaries and affiliates that provide wireless telecommunications and related services, including in Illinois under the "Cellular One" brand name. In addition, SBC has investments in telecommunications companies that serve selected markets outside of the United States. SBC's consolidated 1997 adjusted revenues were approximately $25 billion with a net income of $1.5 billion.

Ameritech Corporation is a Delaware corporation with its corporate headquarters located in Chicago, Illinois. Ameritech is a holding company whose subsidiaries include Ameritech Illinois. Ameritech's other subsidiaries and affiliates include ILECs in four other states, wireless telecommunications and related services providers in Illinois and several other states, and a provider of security monitoring services in most of the United States' largest metropolitan areas. Ameritech also has significant investments in the European telecommunications industry. Ameritech's consolidated 1997 adjusted revenues were approximately $16 billion with a net income of $2.3 billion.

Ameritech Illinois is an Illinois corporation with its headquarters located in Chicago, Illinois. Ameritech Illinois is a certificated local exchange and intraMSA interexchange carrier and currently serves approximately 240 exchanges and approximately 6.6 million access lines throughout Illinois. Ameritech Illinois is both a Bell operating company ("BOC") and an ILEC as those terms are defined in the federal Telecommunications Act of 1996 ("96 Act", "Act", or "TA96").

AIM was a wholly-owned subsidiary of AI at the time that the Joint Application was filed. Subsequent to the filing of the Joint Application, AIM merged with and into AI after obtaining this Commission's approval to do so.

SBC Delaware Inc. is a Delaware corporation and a wholly-owned subsidiary of SBC. SBC Delaware was created solely for the purpose of effectuating an exchange of stock between SBC and Ameritech's shareholders as part of the proposed business combination transaction described below. Upon completion of that transaction, SBC Delaware would cease to exist.

The reorganization of Ameritech Illinois that is the subject of the Joint Application would result from a proposed business combination of SBC and Ameritech ("reorganization" or "merger"). The combination would be accomplished through an exchange of stock between Ameritech's shareholders and SBC, via SBC Delaware. Upon completion of the exchange of stock, SBC Delaware would be merged with and into Ameritech, and Ameritech would become a wholly-owned, first-tier subsidiary of SBC. AI would remain a wholly-owned subsidiary of Ameritech. Because this proposed transaction constitutes a "reorganization" of AI under Section 7-204, Joint Applicants request this Commission's approval of the transaction in accordance with that Section.

Pursuant to notice, prehearing conferences were held before duly-authorized Hearing Examiners of the Commission at its Chicago offices on August 18, October 29, November 24, and December 7, 1998. The following parties petitioned for and were granted leave to intervene by the Hearing Examiners: Covad Communications Company ("Covad"), Sprint Communications Company, L.P. d/b/a Sprint Communications ("Sprint"), AT&T Communications of Illinois, Inc. ("AT&T"), MCI Worldcom, Inc. ("MCIW"), DSSA and Neighborhood Learning Networks ("DSSA"), the Citizens Utility Board ("CUB"), the People of the State of Illinois ("AG"), the People of

Cook County ("Cook County" and together with CUB and AG, "GCI"), the City of Chicago ("Chicago"), the American Association of Retired People ("AARP"), the Cable Television and Communications Association of Illinois ("CTCA"), 21st Century Telecom of Illinois, Inc. ("21st Century"), Nextlink Illinois, Inc. ("Nextlink"), MGC Communications, Inc. ("MGC"), Corecomm, Ltd. ("Corecomm"), the Illinois Public Telecommunications Association ("IPTA"), and the Telecommunications Resellers Association ("TRA"). The Illinois Commerce Commission Staff ("Staff") also appeared by counsel and actively participated in the docket.

Additional petitions for leave to intervene which were granted by the Hearing Examiners were, as follows: the Community Workshop on Economic Development, Sutherland Community Arts Initiative, and the Veterans Neighborhood Builders Association, Inc.

Evidentiary hearings were held on January 25-29, 1999. The following witnesses testified at the hearings: on behalf of Joint Applicants, James S. Kahan, SBC's Senior Vice President for Corporate Development; Karen E. Jennings, SBC's Senior Vice President for Human Resources; Charles H. Smith, President of Pacific Bell Network Services; Christopher J. Viveros, Pacific Bell's Director-OSS Planning and Regulatory Support; W. Patrick Campbell, Ameritech's Executive Vice President of Corporate Strategy and Development; David H. Gebhardt, Ameritech Illinois' Vice President - Regulatory Affairs; Richard R. Galloway, Ameritech's Director of Network Process Management and Service Results; and two outside economists, Dr. Robert G. Harris and Dr. Richard J. Gilbert.

Staff witnesses were Judith R. Marshall, Rasha Toppozada-Yow, Robert Plaza, Deborah Prather, Cindy Jackson, S. Rick Gasparin, Samuel S. McClerren, Christopher L. Graves, and an outside economist, Dr. Carl E. Hunt. GCI witnesses were Dr. Lee L. Selwyn and Charlotte F. TerKeurst. AARP's witness was an economist, Dr. Mark N. Cooper. AT&T witnesses were Sarah DeYoung, Bruce Bennett, Kathleen S. Whiteaker, and an outside economist, Joseph Gillan. Sprint witnesses were David E. Stahly and Paul A. Wescott, and an outside economist, Dr. John R. Woodbury. MCIW's witness was David N. Porter. Nextlink's witness was Daniel Gonzalez. DSSA's witness was Don S. Samuelson. IPTA's witness was Martin S. Segal. At the close of the hearing on January 29, 1999, the record was marked "Heard and Taken."

Subsequently, upon AT&T's motion, the Hearing Examiners admitted into the record as late-filed exhibits the direct testimony (and exhibits) and cross-examination transcript (and exhibits) of one of SBC's witnesses, Mr. Kahan, from the merger proceedings conducted by the Public Utilities Commission of Ohio.

Initial Briefs were filed by Joint Applicants, Staff, CUB, AG, Cook County, AT&T, Sprint, MCI, Nextlink, 21st Century, CTCA, TRA and DSSA. Reply briefs and/or draft orders were filed by Joint Applicants, Staff, CUB, AG, Cook County, AT&T, Sprint, MCIW,

Nextlink, 21st Century, CTCA, AARP and DSSA. Motions for oral argument were filed by Joint Applicants and AT&T.

On March 29, 1999, the Hearing Examiners issued their Hearing Examiners' Proposed Order ("Proposed Order").

Following the issuance of the Hearing Examiners' Post Exceptions Proposed Order ("PEPO"), oral argument on the case was held before the Commission on April 29 and 30 and May 3 and 4, 1999. Subsequent to oral argument, the Chairman of the Commission sent a letter to the Hearing Examiners on June 4, 1999 ("June 4 letter"), which included an Attachment A setting forth thirteen questions that the Commission had for Joint Applicants. The Hearing Examiners provided a copy of that letter and Attachment A to Joint Applicants and all other parties, and on June 7, 1999, Joint Applicants filed a written response to the questions put forth in Attachment A. On June 10, 1999, Joint Applicants submitted an Amended Joint Application and a Motion to Reopen the Record for Further Proceedings to address the questions in Attachment A.

The Motion to File an Amended Application and the Motion to Reopen the Record were granted by the Hearing Examiners on June 15, 1999. On that same day, Joint Applicants served their Direct Testimony on Reopening. Joint Applicants served testimony by James S. Kahan, Christopher Viveros, David H. Gebhardt, William R. Dysart, Terry A. Appenzeller, and Curtis L. Hopfinger.

Also on June 15, 1999, the Chairman of the Commission sent another letter to the Hearing Examiners ("June 15 letter"), including an Attachment A-1. Attachment A-1 included follow-up questions to the questions put forth in Attachment A to the June 4 letter. The June 15 letter also asked the Hearing Examiners to distribute the letter and Attachment A-1 to Joint Applicants and other parties so that they might address the questions in the Reopening Proceeding. On June 18, 1999, Joint Applicants served Supplemental Direct Testimony on Reopening to address the questions in Attachment A-1 to the June 15 letter, and filed a separate document responding to those follow-up questions. Supplemental Direct Testimony on Reopening was submitted by Mr. Kahan, Mr. Dysart, Mr. Viveros, and Mr. Hopfinger. Pursuant to a schedule set by the Hearing Examiners after due notice and a pre-hearing conference held on June 21, 1999, the Staff and numerous intervenors served Direct Testimony on Reopening on July 6, 1999. Staff witnesses serving testimony were Ms. Marshall, Ms. Jackson, Mr. Gasperin, Mr. McClerren, Mr. Graves, and Dr. Hunt. The witness for GCI was Dr. Selwyn. AT&T witnesses were Steven Turner and Mr. Gillan. MCIW witnesses were Joan Campion and Sherry Lichtenberg. Sprint witnesses were Dr. Woodbury, Mark Smith, and [W.] Richard Morris. DSSA and Neighborhood Learning Networks's ("DSSA") witnesses were Mr. Samuelson and David Garth Taylor. 21st Century's witness was Kristen Smoot. The Office of Small Business Utility Advocate for the State of Illinois' ("SBUA") witness was Vincent Gilbert. Covad Communications' ("Covad") witness was Clay Deanhardt. The witness for Accelerated Connections, Inc. ("ACI")

was Jo Gentry. The witness for McLeodUSA Telecommunications Services, Inc. ("McLeodUSA") was David Conn. The witness for Global Com was John Shave. In addition to those parties who had intervened earlier in this proceeding, the Hearing Examiners granted petitions to intervene filed after reopening by Global Com, McLeodUSA, Covad, ACI and Northpoint Communications, Inc.

On July 9, 1999, Joint Applicants submitted Rebuttal Testimony on Reopening by Mr. Kahan, Mr. Viveros, Mr. Dysart, Mr. Hopfinger, Mr. Gebhardt, Mr. Appenzeller, and Dr. Richard Gilbert.

On July 1, 1999 ~~the staff of the FCC and JJ~~oint Applicants submitted to the FCC ~~announced~~ a list of conditions and commitments that Joint Applicants allege reflect an agreement between Joint Applicants and the FCC staff~~ and Joint Applicants had agreed to and that~~ of conditions and commitments that the FCC staff deems to ~~believed would~~ be sufficient for the FCC to issue the required merger-related approvals. This list of conditions was made an exhibit to Mr. Kahan's Rebuttal Testimony on Reopening. The Chairman then sent another letter to the Hearing Examiners on July 9, 1999 ("July 9 letter"), including an Attachment A-2 putting forth additional questions to be addressed by Joint Applicants and parties regarding the commitments proposed by Joint Applicants at the FCC ("FCC Commitments"). Joint Applicants' witnesses responded to these questions in oral testimony at the evidentiary hearings and were the subject of cross-examination. Witnesses for intervenors were not given the opportunity to present pre-filed written testimony regarding the effect of the FCC Commitments in Illinois. On July 20, 1999 Joint Applicants filed a written response, consistent with prior oral testimony, to Attachment A-2 of the July 9 letter.

After proper notice, evidentiary hearings were held at the Commission's offices in Chicago on July 13, 14, 15, and 1999. At the conclusion of those hearings, the reopened record was marked "Heard and Taken."

Post-Hearing Briefs were filed by Joint Applicants, Staff, AT&T, MCIW, Sprint, the AG, Cook County, CUB, DSSA, 21st Century, McLeodUSA, Nextlink, Covad, Northpoint, ACI and Global Com, CCTA, MGC, and TRA on July 28, 1999. Draft Orders were filed by Joint Applicants, Staff, AT&T, GCI, Sprint, McLeod, Covad, ACI, and NLN. On August 10, 1999, the Hearing Examiners issued a Proposed Order on Reopening.

II. Purpose and Scope of Reopening Proceeding.

This Reopening Proceeding arose as a result of Joint Applicants' filing of an Amended Joint Petition and a Motion to Reopen the Record. Both of these filings, in turn, were precipitated by the Chairman's June 4 letter and the questions in Attachment A thereto. The Reopening Proceeding was authorized by Section 7-204(d) of the Illinois Public Utilities Act ("PUA"), which authorizes an extension, not to exceed three months, of the 11-month time frame for a final decision in cases brought under

Section 7-204. In response to the June 4 letter and Attachment A, Joint Applicants proposed a number of voluntary commitments, beyond those made in the earlier phase

of this proceeding, which they would be willing to accept as conditions to approval of the proposed merger.

As we may note from time to time, the scope of this Reopening Proceeding is defined by the questions in Attachments A, A-1, and A-2 to the Chairman's letters and, of course, Section 7-204 of the PUA.

Joint Applicants do not believe that any of the additional commitments made on reopening are actually necessary for us to approve the proposed merger under Section 7-204. They state that they made the additional commitments in response to the questions raised by the Chairman and other Commissioners, and not because the commitments were necessary under Section 7-204. Joint Applicants also state that they do not believe that any of the proposed commitments that they have made to the FCC are necessary to approve the merger under Section 7-204, but that they would not oppose certain substantive portions of those commitments being incorporated into the Order in Illinois, provided that the conditions were tailored to Illinois and did not expose Joint Applicants to duplicative charges under both our Order and the FCC's ultimate Order. Based on the testimony and the briefs, this Order is organized according to the Chairman's questions in Attachment A, Attachment A-1, and Attachment A-2 to the June 4, June 15, and July 9 letters.

III. The Commission's Questions and Joint Applicants' Additional Commitments.

In seeking to structure this discussion appropriately, we have set forth the questions from the various letters in italicized bold text. Sub-parts to each question come from the June 15 letter. There are several references in these subparts to "Exhibit 6." This is Exhibit 6 to Joint Applicants' Amended Petition, which set forth their response to the June 4 questions in Attachment A and described the additional commitments being proposed by Joint Applicants. Only Joint Applicants addressed every follow-up sub-question in Attachment A-1 to the June 9 letter. Thus, in setting forth the parties' positions, we will first describe Joint Applicants' response to the initial question and all sub-parts, followed by a summary of the position of each other party addressing the question.

ACTUAL POTENTIAL COMPETITION

1. An explanation of whether SBC is or is not an "actual potential competitor" in Illinois, as the term has been used throughout this proceeding.

Joint Applicants' Position

According to the Joint Applicants, the record on re-opening establishes that SBC is not an "actual potential competitor" for local exchange services in Illinois. Joint Applicants assert that this conclusion is affirmed by the fact that the U.S. Department of

Justice ("DOJ") – which also considered whether absent the merger SBC is an actual potential competitor for Illinois local exchange services – has approved this merger without any conditions relating to the provision of local exchange service in Illinois.

Joint Applicants first contend that there is a well-developed and accepted method of analysis for determining whether SBC is an "actual potential competitor" in Illinois and, if so, whether the elimination of that potential competitor is likely to have an adverse effect on competition in Illinois. That analysis is based on the DOJ's Merger Guidelines, and has been followed by the FCC and other state regulators charged with reviewing telecommunications company, including RBOC, mergers. Joint Applicants contend that even Staff's own expert witness has conceded that the Merger Guidelines provide an appropriate framework for analyzing the effects of this merger.

As Joint Applicants' expert witness Dr. Gilbert explained, assessing whether SBC is an "actual potential competitor" such that the elimination of it as a potential entrant will have an adverse competitive effect on Illinois markets requires finding that all three of the following elements are met: (1) the merger eliminates a firm that had a high probability of entering the market as a new competitor in the near future, (2) the merger eliminates a firm that is one of only a few firms that are similarly situated to enter the industry in the near future, and (3) the merger eliminates a firm whose entry would have a substantial deconcentrating effect. Joint Applicants assert that the record evidence refutes all three of these elements.

On the first prong, Joint Applicants contend that there is no credible record evidence that SBC would likely enter the market for Illinois local exchange services in the "near future," whether the "near future" is defined as within two years (as the Joint Applicants assert is the proper test) or within three to five years (which Staff asserts is the proper timeframe). No witness to the proceeding has been able to produce a current business or strategic plan of SBC to enter the Illinois local exchange services market, even though Staff and Intervenors have had the opportunity to review thousands of pages of documents from SBC in discovery. An SBC officer with decision-making responsibilities has corroborated SBC's lack of entry plans, submitting sworn and unrebutted testimony that SBC has no plans to enter the Illinois local exchange market in the near future.

According to Joint Applicants, the evidence offered by Staff and Intervenors to demonstrate that SBC was likely to enter the Illinois local exchange market is of five general types, all of which are unpersuasive. The first type of evidence is SBC's current cellular assets in Illinois, which Staff and Intervenors argue make it likely that SBC would enter the Illinois market. Joint Applicants respond that there is no evidence in the record that these assets, such as wireless switches, could be used profitably or at all, to support local exchange operations. In fact, Mr. Kahan presented uncontroverted evidence to the contrary. In addition, the record is replete with evidence that while at one time SBC contemplated a local exchange entry plan based on its wireless operations, including one for Chicago, SBC experienced sufficient

difficulties with its trial in Rochester that it abandoned such plans. Joint Applicants point to the rest of the wireless marketplace as confirmation of the credibility of SBC's decision to abandon such entry. No other major cellular or PCS operator anywhere in the nation is successfully providing local exchange services using a wireless operations base.

The second type of evidence relied upon by Staff and Intervenors is SBC's combination of (cellular) assets in Illinois and experience as a local exchange carrier ("LEC"), which is asserted to give SBC a greater interest and better ability to enter the Illinois market. Joint Applicants respond that this combination is not probative of whether SBC will enter Illinois. Sprint, AT&T, and BellSouth all have significant wireless platforms and ILEC experience, and yet are not using wireless operations as a base for offering local exchange services. Thus, there is no basis for concluding that SBC's similar combination of assets would lead it to act differently.

The third type of evidence relied upon by Staff and Intervenors is statements made by SBC in 1996 and 1997 of its interest in entering the Illinois local exchange market. This evidence is unpersuasive according to Joint Applicants because of its stale nature. The statements relied upon date from prior to termination of the Rochester wireless experiment, and as SBC's officers have testified, SBC's business plans have changed. These outdated statements reflect abandoned and superseded business plans, and are therefore irrelevant.

The fourth type of evidence relied upon is the filing by SBC for a certificate to provide service in Illinois as a CLEC. Joint Applicants argue that holding such a certificate is insufficient to make it a significant potential competitor, otherwise there would be no question that there are more than enough potential competitors in Illinois given the large number of certificated CLECs in the state.

The fifth type of evidence cited by Staff and Intervenors is the objective attractiveness of the Chicago market, plus SBC's supposed subjective interest in Illinois generally based on its merger plans and National Local Strategy ("NLS"). Joint Applicants respond that the first piece of "evidence" only establishes that there are likely to be many potential entrants, not that SBC, in particular, is likely to enter. As for the second piece of "evidence," Joint Applicants contend that SBC's interest in the merger and intent to pursue the NLS in the event the merger is approved says nothing material about what SBC's strategy would be in the event the merger is denied. In fact, there are a number of alternative business strategies SBC could entertain that do not involve entry into the Illinois local exchange market at all.

On the second prong, Joint Applicants contend that SBC is not one of only a few potential competitors in Illinois. Under the Merger Guidelines' potential competition doctrine, three potential competitors, according to Joint Applicants, remaining after a merger is sufficient to eliminate any concern of anticompetitive effect, and six potential entrants eliminates any plausible basis for attacking the merger. Joint Applicants

assert

that the record evidence establishes that there are well more than a few potential entrants.

Joint Applicants point out that Sprint's expert, Dr. Woodbury testified that if SBC is considered a potential competitor in the market for local exchange services in Illinois, then Bell Atlantic, BellSouth, US West, GTE, AT&T, MCI/WorldCom, and Sprint – a total of seven firms – should be considered potential competitors as well. Staff witness Graves agreed on cross-examination to the inclusion of six of the seven firms on this list. Joint Applicants argue that not only did no witness refute this testimony, this compilation of the potential competitors in Illinois is supported by the FCC's recent decision in the Bell Atlantic/NYNEX merger (finding AT&T, MCI, and Sprint to be among the most significant market participants) and recent marketplace developments in which AT&T, MCI, and Sprint have expended billions of dollars to become more effective local exchange competitors.

Finally, on the third prong, Joint Applicants contend that there is no credible record evidence that SBC's potential entry into Illinois would be competitively significant. A small market share loss to SBC would be insufficient unless it is also shown that this loss would have a significant and lasting competitive effect. Joint Applicants argue that there is no evidence of such a lasting impact on this record. Ameritech Illinois did not consider SBC to be a competitive threat, according to Mr. Gebhardt, even when SBC sought and obtained CLEC certification. In addition, there is no combination of valuable assets unique to SBC that would make its entry competitively significant. Joint Applicant points out that there is no evidence of SBC having a strong brand name in Illinois, or that the Cellular One brand name would support customer confidence in a LEC. In contrast, AT&T, MCIW, and Sprint have been and continue to pursue large scale entry, have national brand names, and have experience as LEC. Moreover, there is no evidence that SBC, if it did enter, would do anything more or different than other carriers who have entered solely to pursue large business customers, a market that is already competitive in Illinois.

Staff's Position

Staff maintains the position that, according to Section 7-204(b)(6), the Commission has jurisdiction over four markets: (1) local exchange telecommunications service; (2) intraLATA interexchange telecommunications service; (3) interLATA inter-exchange telecommunications service; and to a lesser extent (4) cellular telecom-munications service. (Staff Init. Br. at 6).

Staff continued to disagree with the Joint Applicants' position regarding competition and, in doing so applied the well-developed Actual Potential Competition doctrine to the facts of this proceeding. According to Staff, Justice Marshall explained the rationale which underlies the doctrine as follows:

> When a firm enters the market by acquiring a strong company within the market, it merely assumes the position of that company without necessarily increasing competitive pressures. Had such a firm not entered by acquisition, it might at some point have entered de novo. An entry de novo *would* increase competitive pressures within the market, and an entry by acquisition eliminates the possibility that such an increase will take place in the future. Thus, even if a firm at the fringe of the market exerts no present procompetitive effect, its entry by acquisition may end for all time the promise of more effective competition at some future date.
>
> …
>
> [W]here a powerful firm is engaging in a related line of commerce at the fringe of the relevant market, where it has a strong incentive to enter the market de novo, and where it has the financial capabilities to do so, we have not hesitated to ascribe to it the role of an actual potential entrant. In such cases, we have held that … entry by acquisition [is prohibited] since such an entry eliminates the possibility of future actual competition which would occur if there were an entry de novo.

Id. (citing United States v. Falstaff Brewing Corp., 410 U.S. 526, 561 (1973)(J. Marshall, concurring)(emphasis in original)).

Staff explained that the federal courts have developed precedent for this doctrine under Section 7 of the Clayton Act which requires an analysis of whether "the effect of [an] acquisition may be substantially to lessen competition or tend to create a monopoly." Staff Initial Brief at 55. The elements which the courts have found necessary to satisfy the doctrine under the Clayton Act are as follows:

1. the market is concentrated;
2. the acquiring firm plans on entering the market through the acquisition of a dominant firm;
3. the acquiring firm would have likely entered the market either through de novo expansion or a toe-hold acquisition in the near future in the absent the merger;
4. either de novo entry or entry through a toe-hold acquisition by the acquiring firm would have been likely to deconcentrate the market or result in other procompetitive effects; and
5. an insufficient number of similarly situated alternative entrants exists.

Id. at 54; Staff Brief on Re-Opening at 4.

Staff did not object, in general to the reasonableness of utilizing the DOJ's merger guidelines to analyze the applicability of the actual potential competition this doctrine to the proposed merger because the elements which the guidelines establish

generally follow the test established by the federal courts and are based on established economic principles. Id. at 37. Staff noted, however, that the guidelines are designed to guide merger review under the federal antitrust laws and not under Section 7-204(b)(6) of the Act. According to Staff, the Commission has to deviate from the guidelines to undertake the type of review required by the Act, namely a review which encompasses all likely effects on competition, including any which are likely to inhibit the market's transition to competition. Staff Reply Brief at 5-22. In this case, Staff opined that the Commission needs to deviate from the general guidelines to account for the market's unusually high degree of concentration and the goal to transition the market from regulation to competition. Staff Initial Brief at 15; Staff Reply Brief at 24.

Particular to the Actual Potential Competition Doctrine, ("APC Doctrine") the guidelines require the acquiring firm to be one of only a few firms that are uniquely situated to enter the market in the near future. The guidelines indicate that a proposed merger is not likely to have a significant adverse effect on competition when three other similarly situated firms exist, and is presumed not to have such an effect when six other similarly situated firms exist. Staff Initial Brief at 37. Staff claims however, that the Commission should deviate from this portion of the DOJ's standards noting that the DOJ guidelines are usually applied to markets with significantly less concentration than the concentration level in Illinois' local exchange market. Id. at 37. Staff explained that when markets are significantly less concentrated, the interjection of three to six competitors may be sufficient to transition the markets to competition. Id. at 37-38. The Illinois' local exchange markets however, would need the interjection of significantly more competitors to transition the market to competition. Staff provided the highly optimistic example of all three remaining RBOCs successfully entering the market and winning 15% of the market each, stating that, in that scenario, the market's concentration level would only be reduced to the point where normal merger analysis begins. Id. at 38. Staff opined that this fact combined with the clear legislative intent to transition the market to competition shows that the Commission should deviate ~~form~~ from the guidelines to evaluate this element of the doctrine more conservatively, i.e., by requiring a larger number of similarly situated alternative entrants. Id.

Turning to the actual application of the APC doctrine, Staff contends that the first prong is satisfied because the market is concentrated. Id. at 55-61. The same evidence and method of analysis which Staff utilized to find that the proposed merger raised competitive concerns because of the market's current anticompetitive structure satisfies this element of the Actual Potential Competition doctrine's test. The application of the same evidence and method of analysis is imperative because the same rationale which underlies Staff's first two arguments also underlies this argument. As stated by the United States Supreme Court, this prong of the test is necessary because "there would be no need for concern about the prospects of a long-term deconcentration of a market which is in fact genuinely competitive." Marine Bancorp., 418 U.S. at 631.

Staff cited to several federal courts' determinations of the level of concentration which satisfied this prong of the test. Staff Initial Brief at 56. Staff set out the cases and the markets which those courts found satisfied the test, as follows:

1. Marine Bancorp, 418 U.S. at 631: (three firm ratio of 92%);
2. Falstaff, 410 U.S. at 478, 484: (four firm ratio of 61.3%);
   (eight firm ratio of 81.2%);
3. United States v. Phillips Petroleum Co., 367 F.Supp. 1226, 1253 (C.D. Cali. 1973), aff'd per curiam, 418 U.S. 906 (1974):
   (two firm ratio of 39%);
   (four firm ratio of 58%);
   (seven firm ratio of 81.2%);
4. Mercantile, 638 F.2d at 1267: (four firm ratios of 86.1% & 73.8%);
5. United States v. Black & Decker Mfg., 430 F.Supp. 729, 748-50 (1976)
   Fluctuating ratios between: (two firm - 54.6% & 48.4%);
   (four firm - 69.5% & 82%);
   (eight firm - 91.6% & 96%).

Staff Initial Brief at 56. In comparison, Staff noted that Ameritech Illinois' sole control of approximately 95% of the local exchange market clearly meets this prong of the test. Id. Further, Staff noted that complete analysis of the market demonstrates that the market's concentration ratio is consistent with the market's competitive structure or, in other words, accurately depicts the lack of competition which exists within the market. Id. at 57-61.

Next, Staff stated that the APC doctrine's second prong is satisfied because the proposed plan of merger seeks to acquire Ameritech Illinois which is the market's dominant firm. Id. at 62.

Applying the third prong, Staff opined that SBC would likely enter the market either through de novo expansion or a toe-hold acquisition in the absence of the proposed merger. Id. at 62-68. Staff noted that three elements must be met to satisfy this prong of the test. First, one must determine that the acquiring firm has available feasible means for entering the market other than through acquisition of the market's dominant firm. Second, a reasonable probability must exist that the acquiring firm would enter the market in the absence of the acquisition. Third, the acquiring firm must be likely to enter the market within a reasonable period of time. Id. at 62, 64-65.

In terms of the first element, Staff stated that no legal barriers prevent SBC from independently entering the market. Further, Staff pointed out that SBC has admitted that it has the financial resources to enter the market independently. Also, Staff opined that the market's barriers to entry are less significant for SBC for three reasons. First, SBC has experience as an ILEC and as an CLEC. Such experience provides SBC with knowledge about how to provide local service that other CLECs do not possess. In particular, SBC has derived the necessary technical, operational, financial and

marketing skills to be a local exchange provider from SBC's experience as such. SBC's experience would also provide SBC with a greater ability to overcome ILEC resistance. SBC would be able to utilize its own ILEC experience to identify CLEC need and successfully arrange to have those needs met. According to Staff, SBC's knowledge would result in SBC successfully negotiating with ILECs and eliminating expensive and lengthy arbitration and/or litigation in which disagreements might otherwise result, thereby reducing the amount of a time and money SBC would have to spend to enter the market. Moreover, Staff claims that SBC has experience as a CLEC which would assist SBC with attaining these same benefits. Staff notes that in SBC's Rochester trial, one of SBC's primary objectives was to gain CLEC experience - a goal SBC met. Cross Ex. 37; Staff Initial Brief at 62-64; Staff Brief on Re-Opening at 21.

Second, Staff claims that SBC has an established brand name both as an incumbent local exchange provider and as a cellular service provider. Along with its established brand names, SBC has a reputation for providing quality service. Staff provided evidence that this advantage would provide SBC with the leverage to immediately win a significant share of wireline customers from SBC's cellular customer base. Staff Ex. 4.02 at 4-6 (citing SBC internal Marketing Research and Analysis Department surveys). Also, SBC provides ILEC services on Illinois' border in St. Louis and SBC's St. Louis advertising reaches Illinois consumers, thereby creating another source for Illinois consumers to recognize SBC's brand name in Illinois and reducing the advertising costs SBC would have to spend to enter the Illinois market. Staff Initial Brief at 62-64; Staff Brief on Re-Opening at 21. Further Staff argues that SBC has extremely effective marketing capabilities as evidenced by its vertical service sales and its acquisition of a significant number of customers in a short time period in its Rochester trial. These marketing capabilities would enable SBC to spread its brand name reputation to the remainder of the market population. Cross Ex. 37; Staff Reply Brief on Exceptions at 26-27 (citing SBC-Ameritech Ex. 1.1 at 26; SBC-Ameritech Ex. 1.0, att.2 (SBC 1997 Annual Report to Shareholders) at 12; Staff Ex. 4.0 at 37).

Third, Staff maintains that SBC is a large, diversified corporation which would have superior resources and economies of scale upon which to draw to enable successful entry. In particular, SBC has access to significantly larger amounts of capital than most alternative entrants. Staff asserts that the only remaining RBOC which would have a comparable revenue base when SBC's and Ameritech's revenues are combined would be a combined Bell Atlantic/GTE. Further, SBC already has employee and equipment resources in Illinois which far outweigh those of alternative competitors. Id. at 62-64; Staff Brief on Re-Opening at 23; see also, Staff Ex. 4.02, att. 5 (demonstrating that SBC has clear advantages over alternative competitors in revenue base, employee base, and equipment deployment in Illinois). According to Staff these factors show that SBC has the ability to enter the market.

In terms of the second element, Staff argues that a sufficient likelihood exists that SBC would enter the market in the absence of the merger. Id. at 64-67. Staff explained that the Commission should consider a number of objective factors to

determine the likelihood of SBC's entry once feasibility of entry is established. These factors are (1) the acquiring firm has an interest in market expansion; (2) the acquiring firm has an incentive to enter; and (3) the acquiring firm's incentive to enter is generally greater than the firm's incentive to undertake alternative expansion strategies. See, Staff Brief on Re-Opening at 9 n. 7.

According to Staff, the record shows that SBC is interested in market expansion. SBC's attempt to acquire AI is SBC's third acquisition of a large, ILEC in the last few years. Staff noted that SBC has (or has established the right to acquire) significant ownership holdings in at least three other firms which provide related product lines, namely Williams Communications, Concentric Network Corporation and OnePoint Communications. Staff agreed that through SBC's current and to be future holdings in Williams and Concentric, SBC is positioned to expand into a national provider of bundled services. Staff explained that SBC has established an extensive fiber network in-region and will utilize William's fiber network out-of-region to provide such services. Concentric adds to the mix by providing access to Concentric's leading edge, Internet based business data service technology. Staff Brief on Re-Opening at 10-13. Further, Staff pointed out that SBC's holdings in OnePoint position SBC to compete in multiple markets as a CLEC, including Chicago. Id at 13-14. Moreover, Staff directed the Commission to numerous statements by SBC to the public and SBC's shareholders that SBC must and will expand operations. SBC's statements to its shareholders have focused on specific expansion strategies, such as becoming a national provider of bundled services and cellular expansion. See, Staff Reply Brief on Exceptions at 21-22 (citing some examples of SBC statements).

Also, Staff established that SBC has the incentive (along with all other carriers) to enter the market. Generally, the incentive is driven by a desire to reap profits. Staff pointed out that anticipated profitability from independent entry is more substantial than anticipated profitability from other ventures. Staff explains that SBC would not only desire to enter Illinois to reap new profits but that SBC would need to enter Illinois to protect significant segments of SBC's current profits.

At the outset, Staff states that the market is extremely profitable, in that Chicago is one of the top three markets in the nation. Ameritech had a net income of $2.3 billion in 1997. Staff Reply Brief at 49. Later, Staff explains that entry would be necessary to target large corporate customers which are the most profitable customers. Staff states that revenues from large corporate customers constitute approximately 18% of total revenues even though the segment constitutes a small percentage of total customers. Staff notes that the market for local services alone in Ameritech territory produced approximately $7 billion in revenue in 1998, 18% of which is $1.26 billion. Significantly, SBC's profits from serving such customers bundled services would increase multiple times when the profits from data or long distance services are added. Staff Brief on Re-Opening at 16. Staff notes that SBC's management, as evidenced by its National-Local Strategy and numerous statements to shareholders, believes that serving large corporate customers as a CLEC will be extremely profitable. See e.g., Staff Reply Brief

on Exceptions at 21-22, 24 (citing SBC's announcement to shareholders that SBC's goal is to provide one stop shopping to large corporate customers). As large corporate customers want one stop shopping, SBC would have to provide one stop shopping to compete for those customers. One stop shopping requires the provisioning of service in all geographic locations where the customers are located. Most large corporations have offices in Chicago. Thus, according to Staff, SBC would have to enter Chicago to target large corporate customers.

Further, Staff established that SBC also reaps approximately 18% of SBC's current revenues from SBC's in-region large corporate customers. As those customers want one stop shopping, SBC would likely lose those customers to other competitors who provide one stop shopping if SBC chose not to pursue such a strategy. Accordingly, Staff argues that SBC would have to enter Illinois as a defensive strategy to protect a significant segment of its current customer base. Staff Reply Brief on Exceptions at 21-24.

In addition to establishing SBC's likelihood of entry because of SBC's incentive to pursue profits from large corporate customers, Staff claims that SBC has already positioned itself to undertake a national, bundled services strategy in the absence of the merger. SBC has the right to acquire up to 10% of Williams' common stock at the time of Williams' initial public offering as well as a right to acquire a seat on William's board of directors when SBC obtains Section 271 approval. Staff Brief on Re-Opening at 14-16 (citing Tr. 1915-1916, 2052-53). Staff explained that Williams Communications ("Williams") owns a national, interstate fiber-optic network which transmits both voice and data traffic. Staff Ex. 4.02 at 11. Williams also has an agreement with Metromedia Fiber Network, Inc. through which Williams has access to intra-city fiber networks in the nation's top cities, including Chicago. Tr. 2052-2053.

Staff explained that SBC's investment in Williams represents a strategic position for SBC to advance into the Illinois market. In fact, Staff stated that the investment demonstrates that SBC is positioning itself to provide bundled services on a national basis, including the Chicago market. Prior to SBC's investment in Williams, SBC had built out a significant data network in its major in-region markets. Staff Ex. 4.02 at 10 (citing SBC Investor Briefing: The Dynamics of Data, No. 204 at 4-5 (Nov. 10, 1998)).

> Staff explained that as SBC's self-built fiber network does not extent~~t~~d out-of-region, SBC's agreement with Williams provides SBC with access to a fiber network in out-of-region markets, including Chicago, and the means to provide bundled services to customers on a national basis. Staff Brief on Re-Opening at 14-15. In fact, Staff noted that Williams has announced that its strategic agreement with SBC will result in Williams and SBC marketing integrated offerings across the nation.

ICC Staff Ex. 4.02 at 11-12 (citing Williams Communications Press Release, Williams Communications Forms Unique Alliance with SBC, (Feb. 8, 1999)).

Staff explained that SBC has further enhanced SBC's position to provide bundled services on a national basis by entering into an agreement with Concentric Network Corporation ("Concentric"), a company that provides Internet-based business data services. SBC holds an ownership interest in the form of 4% of Concentric's stock along with an option to increase that ownership interest by another 4.5%. SBC's stock ownership is part of an agreement to integrate Concentric's leading edge, Internet based, business data service technology into SBC's growing portfolio of data capabilities. Staff Brief on Re-Opening at 16 (citing Staff Ex. 4.02 at 12).

This evidence, according to Staff, established that SBC has undertaken the steps to implement a national, bundled services strategy which would necessarily bring it to Illinois. Also, Staff claims, it is shown that SBC has the incentive to undertake such a strategy either with or without the proposed merger. Therefore, Staff opined that a high probability exists that SBC would enter Illinois in pursuit of a national, bundled services strategy in the absence of acquisition.

Finally, Staff explained that entry into Illinois would be necessary for SBC in order to target cellular customers. Wireless customers are typically high-value customers because they purchase large amounts of various telecommunications services. Staff Reply Brief on Exceptions at 25-26 (citing SBC-Ameritech Ex. 1.0, att. 2 (SBC 1997 Annual Report to Shareholders). According to Staff, SBC has an incentive to increase the revenues which SBC derives from its cellular base by expanding the types of services which SBC provides to its cellular customers, and those services would include wireline service. Also, Staff claims, as SBC has a large number of cellular customers and facilities in Illinois, cellular expansion would bring SBC to Illinois. Staff Initial Brief at 19-20.

Further, Staff maintains that SBC will have to provide its cellular customers with wireline service. The cellular market is becoming saturated and bundling wireline with cellular services is a proven method of competing for cellular customers. According to Staff, SBC has the incentive to undertake a cellular expansion strategy as a defensive strategy to secure SBC's cellular customer base. Staff Brief on Re-Opening at 12-13.

In addition, Staff claims that the evidence showed that SBC had actual plans to pursue cellular expansion which it abandoned for acquisition. Staff provided evidence of SBC's internal documents which established a cellular entry plan. Those documents include financial plans, Marketing Research and Analysis Department surveys, and cellular business plans. Those documents establish that cellular expansion would be profitable and very likely successful for SBC. Further, Staff showed that SBC abandoned those plans only when it chose to pursue acquisition instead of competitive entry. Staff Ex. 4.02 att. 1 (showing that SBC's last public announcement of cellular expansion occurred four days before SBC entered into merger talks with Ameritech). According to Staff, this evidence establishes a very high probability that SBC would pursue cellular expansion in the absence of acquisition.

Staff introduced evidence to show that SBC has positioned itself to enter Illinois through a currently operating CLEC. SBC owns 19.9%, with a warrant to increase ownership by another 10%, of OnePoint Communications ("OnePoint"), which is a CLEC operating within Chicago. Tr. 2015. OnePoint provides bundled services to customers in multi-dwelling units and, as of the first quarter of 1999, had a total of 20,755 subscribers in five markets, including Chicago. Moreover, OnePoint's subscriber growth rate is incredibly high, at 22% per quarter. Staff Ex. 4.02 at 9 (citing SBC Response to Data Request R CLG-001, SBCAMIL 02667). Staff explained that SBC's investment in OnePoint establishes that SBC is interested in Chicago's residential market and that SBC has a toe-hold basis to enter that market. Staff Brief on Re-Opening at 17. Staff explained that the record establishes no reason for SBC to abandon this position in the absence of acquisition.

Staff noted that the only defense which SBC advanced to SBC's ownership interests in Williams, Concentric and OnePoint was the claim that such ownership interests did not provide SBC with control. Staff rebutted SBC's claim merely by referencing the statements of SBC's own expert witness, Dr. Harris, who testified that ownership interests of approximately 10% are "significant" and create "strong alliance[s]" which are substantially greater alliances than mere "joint venture[s]" or "loose strategy alliance[s]." Tr. 1281-1282. Also, Staff pointed out that the public statements in Williams' press release belie SBC's claims and indicate a strong alliance of the type referenced by Dr. Harris, especially when SBC has the right to acquire a seat on William's board of directors. Further, Staff witness Mr. Graves testified that SBC has treated other companies within which SBC holds similar ownership interests as strong alliances, providing those companies with significant direction in the form of marketing, engineering and management training. Staff Ex. 4.02 at 13. Mr. Graves also stated that ownership of the level evidenced is significant and results in company influence merely through company managers fulfilling their fiduciary duty to the company's shareholders. Tr. 2841.

Particular to the evidence of SBC's cellular expansion plans, SBC claimed that cellular expansion is not feasible. Staff noted that this infeasibility argument is belied by SBC's expansion from cellular to wireline in the Rochester Trial as well as SBC's numerous internal documents which develop a cellular expansion strategy and SBC's public announcements promoting cellular expansion. See, Staff Brief on Re-Opening at 10-13. In fact, Staff pointed out that SBC continues to promote cellular expansion to SBC's cellular customers over Cellular One's web site. Id., at 13 n. 13. Finally, Staff explained that SBC's argument conflicts with the consent decree which SBC and Ameritech entered into with the DOJ, wherein the Joint Applicants agreed to sell Ameritech's wireless properties in the St. Louis areas in order to provide a third party the opportunity to compete against the Joint Applicants in St. Louis by expanding from those cellular properties into wireline service. Proposed Final Judgment, United States v. SBC Communications, Inc., 1:99CV00715 at 4 (D.D.C. filed Mar. 23, 1999); DOJ Press Release of Mar. 23, 1999, at 2.

In terms of SBC's alternative plans of entry in general, Staff noted that the only defense advanced was the statements of SBC's managers that it simply would not follow those plans to enter Chicago in the absence of the merger. However, Staff opined that while managers' subjective statements are relevant, they are inherently unreliable because market forces will govern a firm's future conduct. According to Staff, subjective, self-serving statements should only be considered when there is compelling evidence that a firm will not follow its economic self-interest in the future and the objective evidence is weak and contradictory. In this case, Staff noted that the objective evidence is strong, consistent and compelling, and that no evidence suggests that SBC will not follow its economic self-interest in the future. According to Staff, the Commission must rely on the record's objective evidence to find that SBC would likely have entered the Illinois market in the absence of the proposed merger. Id. at 66 (citing Falstaff, 410 U.S. at 548 (J. Marshall, concurring)).

In terms of the third element, Staff argues that SBC would enter the market in a reasonable period of time. Staff explained that the necessary time frame for potential entry, i.e., a reasonable period of time, is dependent on the market's structure. Id. at 67-68. More specifically, Staff stated that entry must be likely within the period of time that the market is expected to remain concentrated such that the acquiring firm's pro-competitive entry will be needed. Id. Staff opined that SBC would likely enter the market in the next three to five years. Tr. 1621, 1716. Given the market's extremely slow rate of deconcentration, Staff anticipates that the market is likely to be characterized as significantly concentrated for many years into the future, sufficiently covering the three to five years anticipated for SBC's independent entry. Id.

In terms of the doctrine's fourth prong, Staff found that independent entry by SBC offers a substantial likelihood of ultimately producing deconcentration or other procompetitive effects. Id. at 68-71. Staff noted that at issue in this prong is the degree of effect on the market the new entrant needs to have in order for the effect to be considered significant. In addressing this issue, Staff relied on several federal court cases which have held that the new entrant's inroads into the market do not have to single-handedly deconcentrate the market. Id. at 68 (citing Mercantile, 638 F.2d at 1270). Instead, the courts have held that even modest inroads into the market can be significant. Id. at 69 (citing BOC Intern. Ltd. v. FTC, 557 F.2d 24, 27 (2nd Cir. 1977)). In fact, the courts have held that significant procompetitive effect exists merely from a new entrant "shaking things up" or engendering competitive motion. Id.

In this case, Staff explained, even modest inroads by SBC into the market would be significant when the extremely high level of market concentration is considered. In order to provide the Commission with a guide to the degree of entry which constitutes a significant impact, Staff referred the Commission to the DOJ Merger Guidelines. Staff pointed out that pursuant to the guidelines, an impact is significant if entry would lessen the market's level of concentration, as measured by the Herfindale-Hirschman Index ("HHI"), by at least 100 points, or even by as little as 50 points in the absence of other mitigating factors. Staff provided calculations which evidence that SBC's minimum

likely rates of penetration would far exceed the penetration levels which would be necessary to achieve a 50, or even a 100, point reduction in the market's HHI. Staff Reply Brief on Exceptions at 119-127 (citing DOJ Merger Guidelines at Sec. 3.11, 4.133).

In regards to cellular expansion, Staff explained that SBC's cellular expansion trial in Rochester serves as a basis to determine the minimum amount of penetration that SBC would be likely to gain within Illinois following a similar, cellular expansion strategy. Staff revealed through calculations that a similar rate of penetration in the Illinois market would decrease the HHI by well over 100 points within a single year. Indeed, Staff explained that the DOJ Merger Guidelines would still hold entry significant even if SBC merely won merely a fraction of the minimum amount expected based on SBC's Rochester trial because such entry would decrease in the market's HHI by over 50 points.

Staff pointed out that SBC would be likely to gain an even greater rate of penetration in the Illinois market than SBC obtained during the Rochester trial for three reasons: First, Illinois' wholesale discounts are significantly greater than those in Rochester. Second, Ameritech's expected penetration rates through cellular expansion into St. Louis were significantly greater than SBC's Rochester penetration rates. Third, SBC's internal customer surveys reveal that a significant portion of SBC's cellular customers would definitely switch to SBC's bundled cellular/wireline service. Staff Ex. 4.02 at 4-5.

Further, SBC has 10 switches in the Chicago area which it currently utilizes to provide cellular service. The number of competitive switches in the Chicago area would increase by 27% if SBC utilized those switches to provide landline service. Staff opined that such an increase would constitute a significant increase in facilities based competition. Staff Initial Brief at 70 (citing Staff Ex. 4.0 at 14, 18, 36).

In terms of SBC's likely entry through a bundled services strategy, Staff explained that SBC's National-Local Strategy plan serves as a basis to determine the minimum amount of entry that SBC would be likely to gain within Illinois following a similar strategy. SBC's business plans provide SBC's anticipated penetration rates over a ten year period in three different market segments, being the large corporate, medium and small business, and residential customer segments. See, SBCAMIL 009114-009115. Staff stated that the significance of these numbers is unquestionable as they far exceed the 50 to 100 point reduction in the HHI required by the DOJ guidelines.

As another example, Staff noted that CLECs provide service through the use of unbundled loops to less than one percent of AI's customers. Staff provided evidence that if SBC could win merely 1% of its cellular customers, or if it could utilize its switches in the Chicago area, the number of customers served by CLECs and the number of CLEC switches would significantly increase. Staff Initial Brief at 70.

Further, Staff opined that SBC could have a significant impact on competition by reselling vertical services, an area in which SBC has successfully utilized its marketing abilities in its incumbent states and California. Id. at 23. Staff explained the degree of penetration anticipated from any of SBC's possible entry strategies would likely be larger because of SBC's finely tuned marketing capabilities. In California, Pacific Bell had a mere 1.5% penetration rate prior to SBC's recent acquisition of Pacific Telesis Group. Following SBC's acquisition, however, SBC increased Pacific Bell's penetration rate for vertical services by approximately 5% in one year and anticipates increasing the same penetration rate by another 30% by the year 2000. Further, SBC has a 47% penetration rate in Caller I.D. and a 49% penetration rate in Call Waiting in SBC's original five incumbent states. In Illinois, AIs' custom calling features have wholesale discounts of approximately 50% and provide a large profit potential for resellers of those services. According to Staff, SBC's likely entry penetration rates would increase if SBC pursued the obvious and combined its clearly strong marketing capabilities for vertical services with underlying local exchange service to win even more customers. Staff Reply Brief on Exceptions at 26-27 (citing SBC-Ameritech Ex. 1.1 at 26; SBC-Ameritech Ex. 1.0, att. 2 (SBC 1997 Annual Report to Shareholders) at 12; Staff Ex. 4.0 at 37).

Of the thirteen facilities-based CLECs in Illinois, Staff pointed out that only three provide service outside of Chicago. If SBC were to enter Illinois outside of Chicago, its entry would increase the number of providers in down-state Illinois by 25%. In fact, Staff stated that in some down-state markets, SBC would be the first competitor to enter the market. ICC Staff Ex. 4.02 at 13-14. Also, SBC could use its local exchange switches in Missouri to compete in Ameritech's St. Louis Metro East area, Cairo, Quincy and Peoria. ICC Staff Ex. 4.02 at 8-9.

At the least, Staff argues, SBC's entry would have other procompetitive effects. In particular, SBC's entry would shake things up and engender competitive motion. Staff Ex. 9.01 at 27-28. According to Staff, its examples are conservative in showing that SBC's entry would clearly be very significant. Staff Initial Brief at 22-24, 68-70.

As to the doctrine's last element, Staff argues that an insufficient number of similarly situated competitors exist to eliminate the need to require SBC to enter independently. Id. at 71. Staff explained that the Commission needs to consider two separate questions to address this issue. First, how many entrants are needed to transition the market from concentration to competition. Second, do the identified alternative entrants have comparable incentives and abilities to enter the market as does the acquiring firm. Staff Brief on Re-Opening at 21.

On the first of these questions, Staff opined that the Commission should retain all possible entrants, including SBC, as means of transitioning the Illinois market to competition. Staff rationalized that new entrants in highly concentrated markets are not likely to have the ability to overcome the dominant firm's market power in order to obtain large market shares. Accordingly, Staff explained that it is only through a

combination of a number of entrants that the combined entrants' market share will expand to decrease the incumbent firm's market power. Staff also stated that the higher the degree of market concentration, the greater the number of new entrants that are needed to transition the market. In fact, Staff opined that in highly concentrated markets, all possible entrants to the market must be preserved. Staff noted that the FCC and respected antitrust treatises have reached the same conclusion. Staff Brief on Re-Opening at 21-22 (citing FCC BA/NYNEX Order at para. 65-66, n. 155; 3 Antitrust Law, para. 170d at 134-146). As the Illinois market is very highly concentrated, Staff maintains that the Commission must preserve all possible entrants into the market, including SBC. Id.

In terms of the second question, Staff noted that the question becomes largely irrelevant when the market's conditions necessitate the preservation of all possible market entrants. Nonetheless, Staff did provide the Commission with an analysis of the alternative entrants identified by the Joint Applicants in this proceeding and concluded that only one of the identified alternative entrants, i.e., a combined Bell Atlantic/GTE has comparable incentives and abilities to enter the Illinois market. Staff Brief on Re-Opening at 19-26.

Staff opined that the large inter-exchange firms such as AT&T, MCIW and Sprint have already entered the market but have not shown an ability to deconcentrate the market to a sufficient degree. The market remains a de facto monopoly despite these competitors efforts over the last number of years to expand their shares of the market. Id. at 39, 71. Accordingly, Staff explained that it would be erroneous to rely on those firms to deconcentrate the market to a sufficient degree. Id. at 39. But, more importantly, Staff stated that it is inappropriate to consider those firms as actual potential competitors because those firms are currently competing in the market. Staff Ex. 9.0 at 11.

Staff also responded to the Joint Applicants' argument that AT&T will develop into a significant competitor by providing service over cable. Staff opined that it would be inappropriate for the Commission to rely on AT&T to deconcentrate the market because a cable offering is not a current market product and several problems could arise which could prevent cable from evolving into a truly competitive service. First, even though cable has been tested on a small scale, no cable company has ever rolled out service on a large scale to serve hundreds of thousands or millions of customers. Accordingly, Staff opined that AT&T could run into technical difficulties when attempting to develop a mass market product. Further, even if such technical difficulties were overcome, AT&T will have to upgrade the entire cable network to provide such service and those upgrades will be completed too many years into the future. Second, the type of service offering which AT&T will develop is unknown and may be unsuitable for many customers because of price or the type of service offered. In total, Staff witness Dr. Hunt opined that a 25%-30% probability existed that AT&T would develop a product which would compete with wireline local exchange service on large scale. Staff Ex. 9.01 at 16-17.

Staff explained that AT&T's offering would be insufficient to bring competition to the market even if AT&T does develop a competitive product. Staff opined that a single competitor is insufficient to develop competition within the market. AT&T would have to win close to 25% of the market's customers to transition the market out of de facto monopoly status. However, even then the market would not be competitive because the market would still be classified as a highly concentrated oligopoly. Dr. Hunt explained that generally the same anticompetitive problems are encountered in highly concentrated oligopolies as in de facto monopolies. Even accepting AT&T as a first tier competitor, Staff maintained its position that a significantly larger number of alternative entrants is needed to transition the market to competition. Staff Brief on Re-Opening at 27-28.

According to Staff, the IXCs' financial information does not indicate that they are able to successfully expand their market share. Staff Initial Brief at 39-40. Staff stated that even though AT&T has a market capitalization of $139 billion which is the closest in comparison to SBC/Ameritech's of $159 billion, market capitalization is based on stock value and fluctuates depending on the vagaries of stock market valuations. Id. at 39. Also, Staff pointed out that AT&T's revenues are earned across the fifty states and the international markets whereas SBC/Ameritech's revenues are concentrated geographically. Accordingly, Staff concluded that AT&T would have difficulty bringing the same financial force to SBC/Ameritech's concentrated markets. Id. at 40.

In terms of MCI, Staff stated that MCIW's market capitalization is around $100 billion, its revenues are $10.7 billion and its profits are a negative $2.8 billion. Id. Staff explained that MCIW's financial numbers are small in comparison to SBC/Ameritech's capitalization of $159 billion, revenues of $43.3 billion and profits of $7.1 billions; and to AT&T's capitalization of $139 billion, revenues of $58.6 billion and profits of $4.6 billion. Accordingly, Staff concluded that MCIW has a financial weakness that prevents it from being considered a similar competitor to SBC. Id.

In regard to the RBOCs, Staff opined that a combined Bell Atlantic/GTE will be the only first tier competitor to a combined SBC/Ameritech. Id. at 38. A combined Bell Atlantic/GTE will be the only firm with sufficient size and presence to gain significant entry into SBC/Ameritech territory. Id. Further, Staff explained that Bell South and US West are likely to be forced into mergers with SBC/Ameritech and Bell Atlantic. Id. Even though a combined Bell Atlantic/GTE may have the ability to compete against SBC/Ameritech, in Staff's view the most likely outcome will be forbearance by the two companies from competing in any large scale competition in each other's markets. Id. at 17.

Staff reiterated that SBC has a greater ability to overcome the market's known barriers to entry than other firms. Accordingly, in the absence of the merger, SBC would be more likely to effectively enter the market than many of the other possible entrants identified by the Joint Applicants. Thus, Staff concluded that an insufficient

number of similarly situated carriers exist such that the Commission can forego the procompetitive effects which SBC's independent entry into Illinois would bring.

Staff concludes that the merger is not likely to have a significant adverse effect on competition for interMSA toll markets in Illinois. Id. at 77-82.

Staff believes that the merger may have an adverse effect on competition for intraMSA toll service because despite the large number of buyers and sellers of intraMSA in Illinois, AI continues to exert some market power over that market; and SBC's elimination as a potential competitor in the local exchange market will have an adverse impact on that market which may spill over into the intraMSA toll market and make it more difficult for new companies to enter that market after the merger. Id. at 82-90.

Finally, Staff takes the position that the proposed merger may have an adverse impact on competition in the cellular markets in Illinois for two reasons. First, now that SBC and Ameritech have proposed to merge and are in the process of divesting one of their cellular properties, they have the economic incentive to cease acting as competitors during this transition period. Second, the long term contracts prevalent in the cellular market create a significant amount of uncertainty regarding the impact of the proposed merger on competition in that market. Id. at 90-92. Recognizing the limits on the Commission's jurisdiction over cellular markets, Staff makes no recommendations to address the first issue. Staff, however, makes recommendations to address its second concern. Specifically, Staff urges the Commission to condition approval of the merger on the following notice requirements.

1. Ameritech should send a notice to their respective cellular customers at least 30 days prior to the divested affiliate.

2. The notice should inform cellular customers of the merger between the SBC and Ameritech, as well as the pending sale of Ameritech Cellular to GTE.

3. Ameritech should provide a copy of its notice to Staff for review and comment at least 15 days prior to the date on which the notice will need to be finalized for mailing to Ameritech's cellular customers. Ameritech should provide their customers with the notice incorporating Staff's comments.

Intervenors' Position

Sprint, the only Intervenor to submit testimony on re-opening on the potential competition question posed by Chairman Mathias, continues to oppose the merger on the ground that the merger would eliminate SBC as an important potential competitor of local exchange services in Illinois. Sprint presents evidence from an expert economist,

Dr. Woodbury ~~argues~~ that (1) SBC would likely enter the Illinois local exchange market to serve consumers, (2) there are not so many other potential entrants that the loss of SBC as a potential entrant would have no effect on the development of competition, and (3) SBC's entry likely would have a significant deconcentrating and procompetitive effect on the supply of local exchange service in Illinois.

In support of its first point, Sprint argues that even absent specific entry plans, SBC should still be considered likely to enter given SBC's ability to enter, based on its experience as an ILEC, its back office billing and support systems, its geographic proximity to Illinois, and its brand name. Sprint also argues that SBC's reasons for pursuing the merger are evidence that SBC might enter the Illinois market absent the merger, either through geographic expansion and entry or acquisition of a smaller out-of-region CLEC. Sprint argues that SBC's past indications of an interest in expanding into Illinois, combined with its current overall business strategy, are evidence of SBC's interest in providing local service in Illinois. Sprint notes that SBC owns almost a 20% equity interest in One Point and there are no technical or network limitations that would prevent SBC from using its One Point investment to provide local exchange services in Chicago. (Tr. ~~R~~1925)

Sprint argues that the absence of current plans does not resolve the issue. Its expert Dr. Woodbury argues that SBC could enter, and if the merger is rejected, SBC could undertake the necessary planning in a relatively short timeframe, such that SBC's entry would not be so far out as to be irrelevant to the Commission's evaluation of the merger. According to Dr. Woodbury, given the rapidly changing marketplace, the continuing development and modification of strategies by ILECs, and the changing regulatory barriers to entry, the absence of current plans is not determinative of future behavior. SBC itself changed its overall strategy and out-of-region entry plans in the short period of time since the Pacific Telesis merger closed. He argues that given SBC's pursuit of an expansion-by-merger strategy, SBC had little reason to develop plans for independent out-of-region entry and, in fact, might consciously avoid making such plans in anticipation of regulatory review, thus the absence of such plans now is not determinative of whether SBC would enter the Illinois local exchange market independently absent the merger. Moreover, given SBC's expansion by acquisition of RBOC and ILEC strategy of the last several years, Dr. Woodbury opines that SBC knows a paper trail of expansion plans would pose an obstacle to regulatory and antitrust approval. (Sprint Ex. 2.2, p. 10).

Also, the Commission should pay little heed to self-serving statements of SBC that it had no present intentions to enter the Illinois local exchange markets. The FCC has found that the existence of actual plans or decisions made by a company's highest decision makers are not necessary to prove that a firm is likely to enter a market. (BA/NYNEX Order, ¶ 75). The determination of whether a firm is reasonably likely to enter a specific market in the near future should be made by the Commission and not based upon the subjective statements of SBC executives who have tremendous incentive to obtain merger approval. (See, U.S. v. Falstaff Brewing Corp., 410 U.S.

526, 566 (1973) (Marshal, J. concurring).

On the second point, Sprint disagrees with Joint Applicants that there are a sufficient number of other potential entrants. Sprint argues that because of the particular market circumstances in Illinois, it is not enough to have three or even six potential competitors remaining after the merger. Dr. Woodbury argues that where, as here, ~~you are dealing with~~ in a virtual monopoly like the one present in Ameritech Illinois territory, there must be a sufficient number of significant potential entrants to create some actual competition in the market. The loss of one significant market competitor in a virtual monopoly can adversely affect the development of competition and the attendant proposals for deregulation. (BA/NYNEX Order, ¶ 66) In support, Dr. Woodbury points to the statements by the FCC that it will not mechanistically apply the Merger Guidelines rule of three remaining potential entrants is enough in analyzing telecommunications markets. Dr. Woodbury further argues that the authority Joint Applicants cite for the "six is enough" rule, an antitrust treatise, has been revised and applies a stricter standard where one of the merging firms is a monopolist and the other is a potential entrant into the same market. The treatise states that a merger is 'presumptively anticompetitive' in the situation where the holder of significant monopoly power merges with a firm that has significant economic capabilities, is more than a fanciful entrant into the market and possesses assets different from other firms. (Sprint Ex. 2.2, pp. 14-15; Sprint Brief on Reopening, pp. 13-14). Dr. Woodbury opines that SBC meets the above criteria and thus the merger is presumptively anticompetitive.

Finally, on the third point, Sprint continues to argue that SBC's entry would have a significantly deconcentrating effect. Sprint urges the Commission to find that the entry of SBC need not deconcentrate the market on its own. The question for this prong of the test is whether SBC's entry absent the merger would have procompetitive effects. (Sprint Brief on Reopening, p. 18)–Sprint argues that given AIs' dominant market position, any entry will help to deconcentrate the market and result in more competitive conditions. It argues that, in particular, like the characteristics FCC found Bell Atlantic to posses, SBC possesses the characteristics to be a significant competitor in the provision of local exchange service in Illinois, and as a result is likely to account for a significant proportion of the local exchange business captured from AI. (Id. at 18) Sprint cites the FCC's BA/NYNEX Order and case law cited therein for the proposition that there is little problem in proving that a new entrant with the scale, size and scope of SBC would deconcentrate the Illinois local exchange market. (Sprint Brief on Reopening, p. 15).

Finally, Sprint argues that the DOJ's non-action in this case should not be persuasive to this Commission. This Commission has an independent statutory duty to consider the competitive effects of this merger in Illinois' telecommunications markets. Dr. Woodbury explained that the DOJ possibly could have deferred a decision on the potential competition issues to the FCC. Further the FCC explained in the BA/NYNEX Order that it did not consider the DOJ's analysis of the potential competition issues in that case to resolve the competitive analysis undertaken by the FCC. (BA/NYNEX

Order, ¶ 24). Sprint argues that this Commission too should do an independent review of the competitive effects of the merger.

21st Century claims that SBC is a potential competitor in the sense that it is so positioned on the edge of the market that it exerts beneficial influence on competitive conditions in the market. Moreover, 21st Century sees SBC, with its knowledge of local operations, as the type of competitor that would effectively challenge Ameritech and make it easier for the CLECs.

Recognizing that it is difficult to prove a negative, i.e., that SBC is not an actual potential competitor, the GCI contend that direct evidence is not the only means by which to evaluate the question. There are a number of factors relevant to such an inquiry, GCI argue, which can be examined and which show that SBC would have a tremendous advantage in providing facilities-based local telephone service. These factors, as set out by GCI, are SBC's experience gained from providing cellular service in Illinois and the wireline service near St. Louis), its size and financial strength. According to GCI, the Joint Applicants have not addressed these factors. The GCI also point to SBC's desire to become a national and international provider of telecommunications service. With such ambitions, the GCI claim, SBC could not avoid competing for local exchange service in Illinois due to the extensive network of national and multinational corporations located in the Chicago MSA. The attractiveness of the Chicago MSA is, according to GCI, borne out by the number of CLECs who have attempted to offer local exchange services here.

The CGI (AG, Cook County and CUB) argue that SBC is an "actual potential competitor" if it is able to enter the local exchange markets in Illinois absent the merger with sufficient ease. These parties add that entry is easy, pursuant to the DOJ guidelines, if it is "timely, likely and sufficient in its magnitude character and scope."

Joint Applicants' Response

On the key question of whether SBC is an actual potential competitor, the Joint Applicants reiterate that there is no credible evidence in the record – on re-opening or prior to re-opening – that SBC would likely enter the Illinois local exchange market in the absence of the proposed merger. Mr. Kahan, the officer at SBC with the responsibility for planning entry by SBC into various markets, testified again that SBC has no plans or intent to enter the Illinois local exchange market absent the merger. The merger opponents, SBC argues, erroneously continue to cite to old Cellular One business plans, marketing strategies, and the like. As Mr. Kahan testified, SBC has rejected the use of a cellular entity to provide local exchange service on a wide-scale basis as a business model, and this decision is consistent with and corroborated by, the lack of such plans by other major wireless carriers in the nation.

Joint Applicants note that none of the other "new" evidence cited by the Staff (which related only to the first prong of the three prong actual potential competition test)

demonstrates that SBC would likely enter the Illinois market absent the merger. Merger opponents incorrectly cite the merger and the planned NLS as evidence of an intent to enter. As Mr. Kahan reiterated, however, SBC has no plans to implement the NLS absent the merger, and will not implement the NLS without the merger. Further, if the merger is rejected, there are a number of strategies SBC can pursue that are consistent with the motivations for the merger but that do not involve entry by SBC into the Illinois local exchange market.

Joint Applicants contend that merger opponents err in their reliance on SBC's investments in OnePoint, Williams Communications, and Concentric Communications as evidence that SBC has entered or will enter the Illinois local exchange market. As to OnePoint, SBC has only a minority investment (which is in the process of being reduced), has no seats on the board of directors, and has no control over prices, strategies, or business plans. OnePoint is the only one of the three companies currently in the local exchange business at all, and given the fact that the company is focused very narrowly on the niche strategy of providing bundled services to MDUs on a resale basis, it is not a significant vehicle for competition with an incumbent LEC. As to the other two companies, neither of which are even in the local exchange business, SBC has only a minority investment, has no seats on the board of directors, and has no control over prices, strategies, or business plans of either company. With respect to the One Point investment, Mr. Kahan testified that SBC viewed this as a financial investment, not as a vehicle for SBC to become a potential competitor of Ameritech Illinois. In fact, SBC has never used such minority investments to perform such important business functions as providing local exchange service.

Merger opponents also err in arguing that SBC's switches in St. Louis constitute facilities in Illinois that make it likely SBC would enter that market. A company needs more than switches to provide successful telecommunications services, as Mr. Kahan points out. Switches need to be augmented with facilities (or resale or UNEs) none of which SBC has in Illinois. Merger opponents also ignore the fact that while adjacent, eastern Missouri and western Illinois are diverse markets, success in one does not necessarily mean success in the other. Finally, Mr. Kahan points out that many advanced services such as xDSL do not necessarily work beyond a certain number of kilofeet from a central office, so it may not even be technically feasible for SBC's existing switches to provide key services in Illinois.

On the second prong, merger opponents' argument that certain firms should not be considered as potential competitors because they are also actual competitors, is wrong. Under the Merger Guidelines, a static look at the current market share of a particular firm can either understate or overstate a firm's future competitive significance. The ongoing efforts of firms like AT&T and MCIW, which may be nascent competitors in the Illinois local exchange market, is important to the analysis, as their ability to expand and bring on additional capacity in the very near future makes them not only actual potential entrants, but significant actual potential entrants.

Staff's arguments that, even aside from the potential competition question, the merger should be rejected because it makes a strong Ameritech Illinois stronger and raises barriers to entry are wrong. The merger is likely to enable Ameritech Illinois to offer services that customers desire, and such merit-based competition is procompetitive. Staff has provided no evidence that Ameritech Illinois' ability to retain customers will result from anything other than enhanced competition on the merits. As to Staff's argument that the merger will have several effects that will increase barriers to entry, Staff witness Dr. Hunt, who recites these supposed effects, provides no evidence of how or why the listed effects would follow from the merger.

Joint Applicants assert that Staff's attempts to undermine the significance of the DOJ's decision to approve the merger should fail. The DOJ shares the goal of the ICC of protecting competition. In furtherance of that goal, the DOJ analyzed the competitive impacts of the merger on local exchange market, including the local exchange markets in Ameritech's territory. Dr. Gilbert, the only witness with firsthand experience of the DOJ's processes, believes that the DOJ would have carefully examined all theories of potential anticompetitive effects in any relevant product market – including local exchange services – and in any relevant geographic market – including Illinois – and would have challenged the merger if it had identified a significant anticompetitive effect in an Ameritech local exchange service area. This view is confirmed by the fact that it is not unusual for the DOJ to require parties to a proposed merger to divest certain assets to deal with competitive concerns in local markets, and the fact that in this case the DOJ filed a Complaint which identified an anticompetitive effect in the Illinois and Missouri wireless services markets. The inference that DOJ concluded that SBC is not a potential competitor in Illinois is confirmed by the fact that the DOJ's divestiture order required Ameritech's St. Louis, but not SBC's or Ameritech's Chicago/Central Illinois, wireless assets to be sold to a purchaser capable of providing local exchange and long distance service in its service area. If SBC were viewed as a significant potential competitor in Illinois, the DOJ would have imposed a similar restriction on the Illinois wireless assets to offset the loss of SBC as a potential entrant.

Commission Analysis and Conclusion

Section 7-204(b)(6) requires the Commission to ascertain that the merger "is not likely to have a significant adverse effect on competition in those markets over which the Commission has jurisdiction." We have jurisdiction over four markets -- local exchange, intraMSA toll, interMSA toll, and to a lesser extent, cellular -- to the extent these markets affect intrastate communications in Illinois. Also, we agree with Staff that wireless service is not a clear substitute for wireline service. Therefore, we conclude that the wireline market is the appropriate product market for the Commission's consideration. We find Staff's proposal that Joint Applicants be required to send notice to customers of the divested cellular affiliate before sale of the affiliate to be reasonable. We see no reason why it would delay consummation of the merger.

As for the different markets over which the Commission has jurisdiction, we

agree with Staff and Joint Applicants that the merger would not affect the Illinois interMSA market adversely. We agree with Staff that the proposed merger would not impact adversely the number of buyers and sellers of interMSA toll services; the standardization of those services; the ability to enter the interMSA toll market; or the amount of information available to buyers and sellers.

On the key question of whether SBC is an actual potential competitor in Illinois, the Joint Applicants propose that we use the DOJ's merger Guidelines as a framework for our analysis. Staff agrees that it would be reasonable for us to use these Guidelines only as an information tool to guide our analysis of the proposed merger pursuant to the Actual Potential Competition doctrine. In other words, Staff urges that we not strictly apply the standards contained in the Guidelines on this issue, and that we not limit our analysis to the Actual Potential Competition doctrine. We concur with Staff in these respects and will use these Guidelines as a starting point to determine the effect, if any, the merger would have on potential competition pursuant to the Actual Potential Competition doctrine, but we will not give them conclusive effect. Nor do we limit our analysis of the proposed merger's likely effects on competition under the Actual Potential Competition doctrine.

We have several reasons for using the Guidelines as the starting point for our analysis. First, they have been used by the FCC and other state commissions to analyze ILEC mergers. See, e.g., Bell Atlantic/NYNEX Order at ¶37; California SBC/PacTel Order at 41-42. Second, there is no reason they should not be applied to this merger; indeed, they have been applied to nearly identical mergers. Id. We recognize, however, that the FCC and other state commissions have not applied the Guidelines mechanistically. The California Commission referenced the guidelines but recognized that it was operating under state law. Also, in its recent review of the BA/NYNEX merger, the FCC undertook an analysis quite similar to the analysis recommended by Staff in this proceeding. We will follow the FCC's lead to fulfill our mandatory duties under subsection 7-204(b)(6) to consider all effects that the proposed merger is likely to have on competition.

Accordingly, we will also consider the other two bases which Staff advanced as reasons why the proposed merger is likely to have an adverse effect on competition, i.e., that the proposed merger is likely to inhibit the market's transition to competition and to increase the market's barriers to entry. Not only do we find that Section 7-204(b)(6) requires us to consider these positions; but, these positions were undeniably found to be the means by which mergers of local exchange carriers can have adverse effects on competition by the FCC. Thus, they are suitable areas for our inquiry.

We recognize the general concept that competition only develops when competitive firms are able to enter a market and expand the supply of good that is being provided. In these premises, Ameritech Illinois' dominant market share must be eroded by the entry of competitive carriers and an expansion of their supply of goods. There is~~, however, no~~ conclusive evidence to show that the proposed merger will inhibit

the ability of competitive carriers to enter the market and to increase their supply of the goods.

We also ~~do not~~ believe that the proposed merger will increase the market's barriers to entry preventing competitive carriers from entering or expanding the supply of the goods. It has been argued that the barriers to entry will increase in a number of ways, including increasing the level of disparity between the information held by Ameritech Illinois and CLECs, decreasing the amount of information available to consumers about alternative providers to Ameritech Illinois, and resale and UNE prices, increasing resistance to the implementation of our pro-competitive policies, creating an opening for the adoption of anticompetitive practices within Illinois under the guise of best practices, and increasing the company's incentive and ability to discriminate. ~~This, however, is based only on speculation not evidence. It also fails to account for the fact that Ameritech will continue to be subject to our jurisdiction and to all the dictates of the Act and our rules.~~ We find that the barriers to entry will be increased. The expert economic testimony presented by Sprint witness, Dr. Woodbury, conclusively demonstrates that Ameritech Illinois currently has and currently acts upon its incentives to delay competitive entry. The merger with SBC increases the incentive of Ameritech Illinois to discriminate against competitors because it will take into account the effects of such discrimination in SBC territory. In other words, the increased local exchange territory for the merged company gives it more incentive to disadvantage competitors in Illinois, the so-called 'spillover effect.' The ability of Ameritech Illinois to execute anticompetitive actions will increase, as well, because the Commission will have a decreased ability to benchmark its actions against other LECs. This is not unbridled speculation. It is unrebutted economic evidence. As Dr. Woodbury stated and as confirmed by federal courts and the FCC, merger review necessarily involves a look into the future. The decision-maker must determine the likely competitive effects of the merger. We find that it is likely that the merged company will act on its increased economic incentives and engage in additional anticompetitive conduct here in Illinois. Evidence of the spillover effect has been shown. If SBC is correct that the Rochester experiment (bundling wireless with CLEC services) failed, then Ameritech Illinois benefited. SBC chose not to enter Chicago using the wireless platform to provide bundled services. In sum, the merger gives Ameritech Illinois increased incentives and ability to disadvantage CLEC competitors. We find that it is likely that Ameritech Illinois (as all rational firms do) would attempt to capitalize on this advantage and increase its profits. Those actions pose a significant threat of adverse effects to the Illinois local exchange market.

Under the Guidelines, a showing of an adverse effect from a merger or acquisition on potential competition is determined through the application of the Actual Potential Competition doctrine. As set out by Staff, the Actual Potential Competition Doctrine requires all of the following elements: (1) the market is concentrated; (2) the acquiring firm plans on entering the market through the acquisition of a dominant firm; (3) the acquiring firm would have likely entered the market either through de novo expansion or a toe-hold acquisition in the near future in the absent the merger; (4)

either de novo entry or entry through a toe-hold acquisition by the acquiring firm would have been likely to deconcentrate the market or result in other procompetitive effects; and (5) an insufficient number of similarly situated alternative entrants exists. Staff Brief on Re-Opening at 4. In conducting this analysis, probable entry means entry in the "near future," and not simply at any foreseeable point in time. See, e.g., 79 Op. Cal. Atty. Gen. 301, 1996 Cal. AG LEXIS, at *44-45 (1996). For the purposes of our analysis, we will use a three-to-five year future time period proposed by Staff as the so-called near future.

Applying the doctrine to the facts in this case, and looking at the first and second elements of the doctrine, we agree with Staff that the evidence establishes a

significantly concentrated market for local service. Also, we find that Ameritech Illinois is the dominant provider within the market. Hence, these first and second elements are satisfied.

Considering the doctrine's third element, we are faced with conflicting positions. Although SBC's executives testified that SBC has no plans to enter Illinois local markets in the near future, there are other factors of record which bear upon the issue and which we are urged to consider. First, there is evidence tending to show that SBC has the incentive to enter Illinois to pursue a national, bundled services strategy. Second, the evidence suggests that SBC has some incentive to enter Illinois to pursue a cellular expansion strategy. Third, we find that SBC has a financial investment in OnePoint, which is a CLEC operating in Chicago.

Overall, it is important to note that the relevant inquiry is whether SBC "would likely" compete with Ameritech Illinois in the near future. See, e.g., FCC BA/NYNEX Order at para. 138 n. 260. We view factors such as SBC's geographic proximity, physical assets, and cellular experience in Illinois as relevant to its "likely" entry. Those factors support Staff's position that SBC would act to increase profits in the absence of acquisition, and that such a desire to increase profits would likely bring SBC to Illinois in perhaps 3-5 years.

As to the doctrine's fourth element, we find that the impact from SBC's likely independent entry into Illinois' local exchange market would ~~not~~ be significant. Namely, we find that SBC's entry would be a significant deconcentrating effect on the market. There is no requirement in the law that it must be shown that SBC would capture more market share than other carriers. We wish to continue this Commission's pro-competitive policies. Given its assets, resources, and geographic proximity to Illinois, it is a given that SBC would be a significant competitor here in Illinois and will deconcentrate the market. BA/NYNEX Order, ¶ 139, note 264. In addition, there is evidence that SBC would attack the residential and small business mass markets in Illinois if the merger is not approved. For example, Exhibit 4, SBC's internal analysis of its National Local Strategy, shows that it projects to enter residential markets and capture 4% market share and to enter small business markets and capture even more market share. Absent the merger, SBC would be coming to Chicago and capturing market share in the residential and small business markets. This would have a deconcentrating effect on those markets. ~~When we examine the various parties assertions, they invariably suggest that SBC's entry would be limited in scope and geared to capture large business customers. While even such entry may benefit competitors, it does not benefit, and may even harm small business and residential customers.~~ At the very least, ~~Staff argues,~~ SBC's entry would shake up the market and engender competitive motion which would be a significant impact, in light of the fact that the market has seen little competitive movement since deregulatory efforts began. This is all the precedent on this issue requires. We will follow that precedent and find that absent the merger, an SBC entry will deconcentrate the local exchange market in Illinois. ~~We note, however, that Staff does not apply the same reasoning with respect to~~

~~AT&Ts recent local competitive strategy.~~

~~There is no evidence that SBC would have more of an impact on the Illinois local exchange market than potential entrants like AT&T, MCIW, and Sprint, all of which have significant technical and capital resources, ILEC experience, and national brand names. In other words, the same factors which are ascribed to SBC apply to these entities as well. Even if SBC were to enter the Illinois local exchange market, there is no evidence that it would not do what some other carriers are doing, which is to pursue large business customers only, with no impact on the provision of local exchange services to residential and small business customers. This would not amount to significant entry in our view.~~

Under the doctrine's fifth element, we must examine whether a sufficient number of alternative likely entrants exists such that the independent entry of SBC is not required. In a monopoly environment, a large number of potential competitors is necessary to encourage the market's transition to competition. The authoritative antitrust text finds that the merger of monopolist with a possible entrant is presumptively anticompetitive. This merger of two virtual monopolists fulfills the requirements that the text considers in determining whether a merger is presumptively anticompetitive. Expert economic testimony presented here confirms the view that more than six significant competitors are needed, especially given the degree of concentration in the local exchange markets in Illinois. The Bell Atlantic/NYNEX Order confirms this viewpoint. (BA/NYNEX, ¶ 66) "The loss of even one significant market participant can adversely affect the development of competition and the attendant proposals for deregulation." (Id.) We agree. The number of significant potential competitors in the Illinois market and their capabilities does not dissuade us from the view that SBC must be retained as a significant potential competitor.

~~As mentioned earlier, SBC is not one of only a few potential competitors of Ameritech Illinois. To the contrary, Ameritech Illinois would have at least six major competitors (AT&T, MCIW, Sprint, Bell Atlantic, BellSouth, and US West) after the merger. This number is sufficient and undisputed. (1984 DOJ Merger Guidelines, § 4.133, SBC/Am. Ex. 35.) The argument that certain firms cannot be considered potential entrants because of some current market presence, however small, is not persuasive. The key inquiry is future competitive significance; if AT&T or MCIW have the "potential" to expand their respective market shares in the Illinois local exchange market, then for purposes of this analysis they are both actual competitors and actual potential competitors. *See, e.g.*, *In re Heublein, Inc.*, 96 F.T.C. 385, 590-91 (1980); *In re Champion Spark Plug Co.*, 103 F.T.C. 546, 631 (1984). Indeed, the fact that they already have a toe hold in the market makes them, if anything, even more significant then other potential competitors, that are not currently in the market such as SBC. The presence and visibility of AT&T and MCIW make them the most likely to rapidly capture market share from Ameritech Illinois in the near future.~~

~~Nor can we dismiss AT&T's recent mergers and its stated desire to develop a~~

~~cable alternative to telephone service. This is evidence of the creative and expansive ways that telecommunications providers are changing the markets. AT&T's cable service, in the next three to five years, could be developed to provide local exchange service on a large scale. We are not persuaded by Staff's attempts to minimize the significance of this venture.~~

Consequently, the potential competition test is satisfied. 1) the market is concentrated; (2) SBC plans on entering the market through the acquisition of Ameritech. (3) SBC is a likely entrant. (4) SBC is one of a few significant potential entrants; and (5) SBC's entry would have a substantial deconcentrating effect in the Illinois local exchange market. Thus, the elimination of SBC as a result of this merger significantly harms competition in the Illinois local exchange market. The proposed merger violates the provisions of Section 7-204(b)(6) of the Illinois Public Utilities Act. The conditions set forth below, if satisfied, begin to ameliorate the significant adverse effects on competition. ~~In the final analysis, while SBC could likely enter the local market in the next three to five years, it is improbable that SBC will be able to single-handedly deconcentrate the market or obtain a significant share of the market anymore than other competitors combination with other entrants.~~

~~It is important to note that the evidence on the issue of whether SBC is an actual potential competitor is such that it allows for more than one reasonable inference. Although we find that the merger meets some of the elements in the doctrine here discussed, we also find that the imposition of the conditions set forth herein mitigates our concerns. As a result of this finding, we will adopt the proposed "conditions" hereinafter set forth as those conditions we deem necessary to our approval. We will require the Joint Applicants to comply with these measures which are both substantial and meaningful and provide long term assurances. We have the authority to impose these conditions pursuant to our power to review the application for the proposed merger and decide whether the Applicants request should be approved under Section 7-204 of the PUA.~~

INTERCONNECTION

2. ***The manner, necessary actions and timetable by which Joint Applicants would provide to CLECs in Illinois services, facilities or interconnection agreements which SBC has made available to CLECs in its other service territories;***

Joint Applicants' Position

Joint Applicants understand this issue to involve the situation where SBC, as the incumbent LEC, provides unbundled network elements ("UNEs"), services, facilities and interconnection agreements/arrangements to CLECs in other SBC service territories. Joint Applicants propose the following commitments with respect to this issue:

Interconnection Commitment A

A. Applicants would commit to provide such services, facilities or interconnection agreements/arrangements to CLECs in Illinois subject to the following reasonable exceptions and conditions:

Joint Applicants would not be required to offer UNEs, services, facilities or interconnection agreements/arrangements in Illinois which are imposed upon SBC by another state as a result of an arbitration (as opposed to a voluntary agreement);

Joint Applicants would not be required to offer UNEs, services, facilities or interconnection agreements/arrangements if they are technically infeasible or if there are state legal reasons in Illinois which would make such offerings unlawful/contrary to state policy;

Joint Applicants would not be required to offer UNEs, services, facilities or interconnection agreements/arrangements in Illinois at the same rates or prices as SBC makes such offerings in other SBC service territories since costs may and do vary by state, since pricing in each state reflects state pricing policies and costs;

Joint Applicants would not waive any right to seek modifications to interconnection agreements which incorporate services, facilities, or interconnection arrangements if changes in applicable law or state or federal requirements change the requirements for such UNEs, services, facilities, or interconnection agreements/arrangements. Indeed, Joint Applicants would not waive their rights with respect to any changes in federal or state law that may affect any of their proposed commitments.

Although this commitment would be immediately implemented upon merger closing, Joint Applicants state that a specific timetable for gauging fulfillment of this commitment cannot be established at this time as the services, facilities and interconnection agreements "ported" into Illinois are dependent upon requests by CLECs and the fact that SBC and Ameritech have not yet engaged in joint post-merger planning and review in this area. Unless otherwise stated, commitments made by Joint Applicants are for a period not to exceed three years after closing.

Interconnection Commitments B, C, and D

In addition to Interconnection Commitment A above:

B. Joint Applicants would further commit that within 90 days of merger closing that they would participate in a workshop or collaborative process with Staff and CLECs to compare UNEs, services, facilities or interconnection agreements which SBC has made available to CLECs in other states and which are not currently available and desired by CLECs in Illinois. In establishing any collaborative processes, Joint Applicants expect the Commission to set strict scope and time frames consistent with the specific goals of each such process.

C. Joint Applicants would provide copies of interconnection agreements from other states to the Commission upon request, which would allow the Commission to monitor such developments.

D. Finally, while the Chairman's question involves only SBC offering UNEs, services, facilities or interconnection agreements/arrangements to CLECs, Joint Applicants would also commit that, if a CLEC affiliate of SBC/Ameritech obtains a UNE or interconnection arrangement from an incumbent LEC through arbitration initiated by the SBC/Ameritech CLEC under 47 U.S.C. § 252, then SBC/Ameritech's incumbent LECs would make available to requesting, similarly situated CLECs in their service areas, though good-faith negotiation, the same UNE or interconnection arrangement on the same terms (exclusive of price). SBC/Ameritech would be obligated to provide such UNE or interconnection arrangement(s) where it is technically feasible to do so on or in the network of SBC/Ameritech's incumbent LEC and subject to the unbundling limitations of 47 U.S.C. § 251(d)(2). The determination of whether a UNE or interconnection arrangement is technically feasible, or whether the requesting CLEC is similarly situated, would include appropriate consideration of regulatory, network, and market circumstances surrounding the request of SBC/Ameritech's CLEC and the request made of SBC/Ameritech's incumbent LEC, including but not limited to network architecture, OSS, and universal service reform. The price(s) for such UNEs or interconnection arrangements would be negotiated on a State-specific basis and, if such negotiations do not result in agreement, SBC/Ameritech's incumbent LEC would submit the pricing dispute(s), exclusive of the related terms and conditions required to be provided under this Section, to the applicable state commission for resolution under 47 U.S.C. § 252. Joint Applicants understand that if they seek and obtain UNEs,

services, facilities or interconnection agreements in the capacity of a CLEC (other than by a “most favored nations” request), they would have the burden in Illinois of proving why a form of interconnection arrangement or “capability” should not be implemented in Illinois.

Joint Applicants note that Section 252(i) of the Telecommunications Act of 1996 does not contemplate automatic adoption of one state's approval of an interconnection agreement in other states. This is especially so where Ameritech Illinois is not a "party" to interconnection agreements in other SBC states. In addition, Joint Applicants assert that the Commission should not want to abdicate its responsibility to review Illinois interconnection agreements from an Illinois perspective by automatically adopting the policies of other states.

a) ***On p. 8 of Exhibit 6, Applicants "generally commit" for a period not to exceed three years (with no set timetable for implementation because no post-merger planning has occurred) to provide services, facilities or interconnection agreements/arrangements to CLECs in Illinois as have been made available in other SBC service territories. However, the Applicants subject this commitment to four conditions, which raise the following questions:***

i) ***The Applicants except from this commitment UNEs (Unbundled Network Elements), services, facilities or interconnection agreements/ arrangements which are imposed as a result of arbitration. What reasons do the Applicants have for excepting arbitrated agreements?***

Joint Applicants explain that the limitations included in these commitments reflect their understanding of the intended application of the Telecommunications Act of 1996 ("TA96" or “1996 Act”). They state that the framework of interconnection policies of TA96 is premised upon parties first negotiating interconnection agreements and, if that fails, arbitrating before the individual applicable state commission. 47 U.S.C. §§ 251 and 252. Joint Applicants assert that the "limitations" are a direct reflection of the differences in the law and telecommunications regulatory policies in the 50 different states and this is why, at least in part, the FCC does not conduct all interconnection arbitrations. Due to these differences, Joint Applicants believe it is not reasonable to automatically import every term and condition of an interconnection agreement into Illinois without regard to its context, source, or underlying costs, technical or network considerations that may vary from one state and one company to another. (Joint Applicants also state that they assumed for purposes of this question that it is appropriate to resolve interconnection issues in the context of this merger proceeding under 7-204. It is Joint Applicants’ position that it is not appropriate to do so but that they made their commitments to address the Commission's concerns nonetheless.)

Joint Applicants acknowledge that their Commitment A is limited to terms and conditions that SBC voluntarily negotiates in its present in-region states. Joint Applicants maintain that any commitment that would impose on SBC an obligation to automatically offer in Illinois a term or condition of interconnection based on a term or condition that was ordered in another state (and to which Ameritech Illinois was not even a party) would provide undue authority to the commissions of other states and would ignore entirely the fundamental differences that may exist in underlying costs, technology, facilities, and systems. They further assert that such a requirement could present the possibility of inconsistent obligations if different state commissions come to different resolutions on the same issues. Further, Joint Applicants note that a commitment to offer every term and condition ordered in other states would represent an obligation that no other telecommunications provider in the nation would have.

For similar reasons, Joint Applicants have excluded from Commitment D an obligation to provide in Illinois interconnection agreements that Joint Applicants' out-of-region CLEC has obtained solely by taking advantage of its Section 252(i) ("most favored nations") rights. Joint Applicants explain that opting into an existing approved interconnection agreement is a fairly standard CLEC practice used as a means of quickly entering into business before the CLEC completely evaluates its individual needs and negotiates an interconnection agreement appropriate to its business plans, and that Joint Applicants' CLEC will no doubt use this practice. Joint Applicants argue that requiring them to provide interconnection terms simply because they appear in an interconnection agreement that an affiliate of Joint Applicants executed (*e.g.*, with BellSouth in Georgia) suffers from all the flaws of requiring Joint Applicants to offer all obligations ordered by other state commissions, and would flood this State with interconnection terms that may have no bearing on this Commission's policies.

Joint Applicants explain that Commitment D also addresses the allegation of some parties that SBC is uniquely situated to negotiate superior interconnection agreements. If that allegation is true (though Joint Applicants believe it is not), CLECs in Illinois will benefit directly from SBC's ability to secure novel interconnection arrangements for its own CLEC affiliate because, as discussed, Joint Applicants have committed to offer such arrangements in Illinois. Joint Applicants explain that excluding Section 252(i) rights would not impact this benefit because SBC's ability to take advantage of most favored nations rights would have nothing to do with its ability to negotiate novel interconnection arrangements.

ii) ***The "AT&T Interconnection Agreement" appears to be an integral part of SBC's 271 application in Texas. Is this interconnection agreement excepted from this commitment?***

Joint Applicants state that the agreement in Texas would be excepted because it was an arbitrated agreement (actually, the result of two arbitration proceedings). Joint Applicants explain that, subsequent to those arbitrations and in Southwestern Bell's 271 proceeding in Texas, the Texas PUC decided to utilize the AT&T arbitrated

agreement as a base agreement but also imposed additional requirements through a long and involved collaborative process of much "give and take" to produce what is called a "Proposed Interconnection Agreement" or "PIA." Southwestern Bell's willingness to accept such an agreement in Texas was in return for the Texas PUC's stated support of Southwestern Bell's 271 application before the FCC. It is not clear to SBC that if such a PIA were offered in Illinois that this Commission would support an Ameritech Illinois 271 application. In addition, as indicated, there are numerous provisions in the AT&T Interconnection Agreement and the PIA that are arbitrated requirements and as such would be excepted from Joint Applicants' current commitment. However, Joint Applicants state that if the Commission were to find that the offering in Illinois of the so-called "PIA" from Texas would result in unconditional Commission support for Ameritech Illinois' 271 Application, Joint Applicants would be willing to offer a similar PIA in Illinois.

iii) ***The Applicants except from this commitment UNEs, services, facilities or interconnection agreements/arrangements which are technically infeasible. By what process and using what standards is the Commission to resolve technically infeasible claims by the Applicants which are disputed by competitors? If a claim of technical infeasibility is made by Joint Applicants and the Commission finds otherwise, by what process is the issue definitively resolved? Please clarify.***

Joint Applicants state that the term "technical feasibility" is a commonly used term in the industry, and that they drew the term "technical feasibility" from TA96, where it is used frequently (*e.g.*, 47 U.S.C. § 251(b)(2)(b)). Moreover, the term is defined in the FCC's rules, 47 C.F.R. §51.5, and has been used in some of this Commission's prior Orders and in Ameritech Illinois' interconnection agreements.

With regard to the specific question, Joint Applicants explain that the issue of technical "feasibility" or "infeasibility" will be addressed in the first instance in interconnection negotiations. Failing resolution in negotiations, the issue of technical infeasibility will be resolved by the Commission in the context of an arbitration or complaint case and any associated proceedings, where Joint Applicants, under FCC rules, would have to establish their position before this Commission by "clear and convincing evidence" (*see* 47 C.F.R. § 51.5) and where, like any other disputed interconnection issue, the Commission would have to reach its conclusion based upon the specific facts of the case.

iv) ***What pricing methodology do the Applicants propose apply in Illinois for such UNEs, services, facilities or interconnection agreements/ arrangements? Does the Applicants' commitment contemplate the ability for CLECs to utilize an optional plan for paydown of non-recurring charges and installment payment plan for collocation and other substantial non-recurring costs incurred as a result of entering into interconnection agreements?***

Joint Applicants state that the issue of price should be addressed in the first instance in interconnection negotiations. While Joint Applicants are free under TA96 to negotiate prices irrespective of any specific pricing rules, Joint Applicants expect that in any arbitration the Commission would apply the forward-looking pricing rules established by the FCC in its rules implementing TA96 (*see, e.g.*, 47 C.F.R. §§ 51.501-15) and by this Commission in its TELRIC Order (Docket 96-0486). Joint Applicants have included a limitation on pricing because TA96 and the FCC rules contemplate (indeed, require) that the pricing-related requirements of the Act will be implemented and applied on a state-by-state basis, and because costs vary by state. Joint Applicants observe that this State and this Commission have expended substantial resources in constructing pricing policies applicable to UNEs in its TELRIC proceedings, and anticipate that the Commission will follow those principles.

As to Joint Applicants' commitment to utilize an optional payment plan for non-recurring charges, Joint Applicants agree to commit to the plan outlined in the Ohio merger stipulation. Assuming the overall terms of the Commission's final Order are consistent with the Ohio Stipulation, Joint Applicants would commit as follows:

> As an incentive for local residential telephone competition, Ameritech Illinois will offer a promotional 18-month installment payment option to CLECs for the payment of non-recurring charges associated with the purchase of unbundled network elements used in the provision of residential services and the resale of services used in the provision of residential services. This promotional 18-month installment option will begin on the date 30 days following the Commission's entry of a final appealable order approving the Merger and will terminate 3 years following the Merger Closing Date. No interest will be assessed on the remaining balance during the 18-month period as long as the CLEC continues to purchase the residential unbundled network element or residential resold service. In the event the CLEC does not purchase the residential unbundled network element or residential resold service for the entire 18 month payment period, any remaining non-recurring charge balance shall immediately be due and payable when the service is terminated. Unless an interconnection agreement by its terms specifies otherwise, interest at a rate of 8% per annum will be assessed on any amounts that become

> immediately due and payable and are not paid within 30 days of same. If a CLEC disputes its obligation to make payment when due, it will place the amount due in an escrow account earning a rate of at least 8% interest, pending a final resolution of the dispute.
>
> As an additional incentive for local residential telephone competition, Ameritech Illinois agrees to waive the Bona Fide Request ("BFR") initial processing fee associated with a BFR submitted by a CLEC for service to residential customers under the following condition: the CLEC submitting the BFR must have, for the majority of the BFR requests it has submitted to Ameritech Illinois during the preceding 12 months, completed the BFR process, including the payment of any amounts due. The BFR initial processing fee will be waived for a CLEC's first BFR following the Merger Closing Date and for a CLEC that has not submitted a BFR during the preceding 12 months. This BFR fee waiver will be offered for a period of 3 years following the Merger Closing Date.

b) ***On p. 9 of Exhibit 6 under Commitment B, the Applicants commit to a workshop or collaborative process to compare items not available in Illinois which are available in other SBC service territories. What is the Commission's role in this process? Have the applicants made a commitment to take action with this information? What is the end goal of this process? Please clarify.***

Joint Applicants state that they would hope for the active participation of Staff in every collaborative process. Staff's primary role would be that of facilitator. Indeed, based upon SBC's experience in such processes, Joint Applicants believe that the speed, efficiency, and ultimate success of a collaborative process is highly dependent upon whether a commission Staff is prepared to play an active role of "honest broker." Joint Applicants believe that the proper work product of this collaborative process would be a report from Staff summarizing the interconnection terms and conditions that would be made available and the interconnection arrangements that CLECs desired. Of the arrangements desired by CLECs, Staff would summarize those that Joint Applicants agreed to and that Joint Applicants objected to. Where Joint Applicants raised objections, Staff would state its position on the merits of Joint Applicants' objections. It is Joint Applicants' expectation that the Staff report would be leveraged by parties negotiating interconnection agreements as indicative of Staff's likely position in an arbitration proceeding. The Commission would, of course, decide the merits of the issues based on the record developed in the arbitration proceeding.

Joint Applicants did not propose a specific role in this or any other collaborative process for the Commissioners since Joint Applicants believed it would be

presumptuous to do so. However, Joint Applicants invite participation of one or more Commissioners in the collaborative process, which they believe was of assistance in Texas. At the same time, Joint Applicants agree that the Commissioners are not required to take any active role in this process unless and until a Section 252 arbitration is brought before them, and state that the Section 252 process provides the Commission with ample enforcement authority to resolve disputes and decide what terms and conditions should be included in an interconnection agreement.

Additionally, Joint Applicants state that once an interconnection agreement is in place, this Commission has ample power under § 13-514 of the PUA to enforce such agreements. 220 ILCS 5/13-514. Section 13-515 provides for an expedited procedure once Ameritech Illinois has § 271 approval. However, in the interim, § 13-515 could nonetheless still be utilized, provided the complaint sets forth a separate independent basis for a violation of § 13-514, even if such alleged acts or omissions may constitute a violation under item (8) of § 13-514. 220 ILCS 5/13-515(b). Section 13-516 provides a unique penalty structure which allows the Commission to fine the carrier up to $30,000 per day for noncompliance, which is substantially more than the standard penalties under the Act. (Dysart SDR, SBC/Am. Ex. 10.1 at 6-7.) 220 ILCS 5/13-515 and 516.

c) ***On p. 9 of Exhibit 6 under Commitment C, the Applicants commit to provide to the Commission copies of interconnection agreements from other states. What Commission action did the Applicants envisage as part of this process, and is public disclosure of all interconnection agreements the contemplated goal of this commitment? If not, why not?***

Joint Applicants state that the purpose of this commitment is simply to make information conveniently available to the Commission and interested parties. This commitment would provide the Commission and Staff with the ability to obtain information that might be useful to them during the collaborative process and/or thereafter to monitor Joint Applicants' continued compliance with the possible condition of offering agreements from other states in Illinois. Joint Applicants state that while the goal of this Commitment is disclosure to the Commission, the Commission could certainly expand that goal to public disclosure by establishing a repository – similar to the existing repository of in-state interconnection agreements – in this State for all of Joint Applicants' interconnection agreements so that those agreements would be available for review to all CLECs operating in this State, as well as to the public at large.

d) ***On p. 9 of Exhibit 6 under Commitment C, the Applicants commit to provide to the Commission copies of interconnection agreements from other states. If "winback" marketing provisions by the ILEC are prohibited in other interconnection agreements, do the Applicants***

endorse their prohibition in Illinois? If prohibitions on "winback" marketing provisions are not in other interconnection agreements, should their prohibition be considered by the Commission? If so, in what manner? If not, why not?

Joint Applicants respond that they are not aware of any "winback" provisions or prohibitions in their interconnection agreements. While aspects of "winback" (a term that Joint Applicants understand to mean the attempt to "win" a customer "back" that has been "lost" to a competitor) have been addressed in arbitrations and collaborative processes involving SBC, Joint Applicants are not aware of interconnection agreement "winback" prohibitions. Joint Applicants strongly believe that "winback" is a procompetitive practice; indeed, it is the essence of competition. As such, Joint Applicants do not believe "winback" prohibitions as to either party to an interconnection agreement would be appropriate. There are numerous regulatory requirements in place to protect competition, including the appropriate use of CPNI and carrier information, etc.

e) ***On p. 9 of Exhibit 6 under Commitment C, the Applicants state that if they obtain UNEs, services, facilities or interconnection agreements in the capacity of a CLEC, that "they would have the burden in Illinois of proving why a form of interconnection arrangement or 'capability' should not be implemented in Illinois." Please clarify this statement.***

Joint Applicants respond that the presumption created by Commitment D (Commitment C is about providing copies of interconnection agreements) is that, where Joint Applicants' CLEC affiliate negotiates (or obtains via arbitration) novel interconnection terms in SBC/Ameritech's out-of-region states, Ameritech Illinois will be presumed to have to provide such arrangements to CLECs in Illinois. However, if those arrangements rely on capabilities that Ameritech Illinois does not have and therefore are technically infeasible for Ameritech Illinois to provide, Ameritech Illinois would not provide similar arrangements. If Ameritech Illinois took the position that such an arrangement was not technically feasible, it would have the burden of establishing that infeasibility to the Commission in the event of an arbitration. Joint Applicants state that technical feasibility is well defined by the FCC, which definition this Commission and telecommunications providers commonly rely upon.

f) ***On p. 9 of Exhibit 6 under Commitment D, the Applicants commit to provide access to the interconnection agreement of their CLEC affiliate under 47 U.S.C. § 252 if such interconnection agreement is obtained through arbitration. What is the likelihood that such agreement will be obtained through arbitration? Further, if such interconnection agreement is not obtained through arbitration, does this commitment apply? Further, why would the Applicants propose that "the same terms (exclusive of price)" would apply? Does the***

"exclusive of price" distinction violate the Illinois Public Utilities Act or the Telecommunications Act of 1996 or this Commission's stated pro-competitive policies?

Joint Applicants respond that they cannot predict the likelihood that a CLEC affiliate may obtain an interconnection agreement via arbitration (it may also obtain such an agreement via negotiation). Joint Applicants further explain that Commitment D would apply to interconnection arrangements obtained through arbitration or through specific negotiation, and would not apply to terms that the CLEC affiliate obtained solely by exercising its most favored nations rights under Section 252(i). The purpose of this commitment is to give CLECs in Illinois the advantage of obtaining novel interconnection arrangements that SBC/Ameritech are able to obtain. Joint Applicants explain that the exclusion of any pricing terms simply recognizes that pricing in Illinois is dictated by this Commission's TELRIC rules, that costs vary by state, and that importing inconsistent provisions or policies would create unnecessary conflicts. For example, if an element costs $10 in New York and $5 in Illinois, Joint Applicants assert that it would be wrong to require the higher New York cost to be used to set prices in Illinois (or vice versa). Joint Applicants do not believe that this exclusion would violate the PUA but, in fact, is consistent with it and the requirements of TA96. Joint Applicants nevertheless believe that maintaining the integrity of this Commission's pricing rules would advance this Commission's pro-competitive policies. Indeed, they contend that to simply adopt prices based upon different costs in different jurisdictions would not advance the Commission’s policies, but rather would be unlawful.

g) ***On p. 9 of Exhibit 6 under Commitment D, the Applicants commit to provide access to the interconnection agreement of their CLEC affiliate under 47 U.S.C. § 252 if such interconnection agreement is obtained through arbitration. Do the Applicants contemplate that their CLEC affiliate will utilize UNEs or resold service to provide service to customers? Are there positive or negative competitive implications for the local exchange market which underlie the use of UNEs by the Applicants' CLEC affiliate?***

Joint Applicants state that their CLEC affiliate will utilize UNEs and resold service and any other lawful means to enter markets and provide services out of region (including utilizing its own facilities). Joint Applicants have committed not to seek local exchange certification for their CLEC affiliate in Illinois until at least January 1, 2003 but instead to “partner” with Ameritech Illinois for the provision of local exchange services to customers in this State. Joint Applicants contend that the implications of the CLEC affiliate's use of any lawful means of entry, including UNEs, is no different from the use of UNEs by any other CLEC.

h) ***On p. 9 of Exhibit 6 under Commitment D, the Applicants state that their CLEC affiliate's interconnection agreement will be made available to "similarly situated" CLECs. By what process and using***

what standards is the Commission to determine if a CLEC is "similarly situated?"

By "similarly situated" CLECs, Joint Applicants mean CLECs seeking to obtain interconnection agreements containing the same volume, term, and area of service commitments and the same terms and conditions concerning any relevant issues such as signaling requirements and interconnection arrangements as Joint Applicants' CLEC affiliate's interconnection agreement. Joint Applicants state that if there was a dispute in this regard it would come to the Commission in the form of an arbitration or complaint.

i) ***What are the specific enforcement mechanisms which would be used by the Commission in the event of non-compliance with the commitments made by the Applicants?***

Joint Applicants state that Section 252 of TA96 provides the proper enforcement mechanisms for the Commission to ensure that Ameritech Illinois in fact meets Joint Applicants' commitment to provide in its interconnection agreements with CLECs in Illinois the required terms and conditions that SBC provides to its in-region CLECs and the required terms and conditions that Joint Applicants' CLEC affiliate obtains in other states. Since "non-compliance" with Commitments A and D ultimately would mean that Ameritech Illinois refused to include in an interconnection agreement an arrangement that it is required under this commitment to provide, "enforcement" can be accomplished by the Commission, as arbiter in a Section 252 arbitration, requiring Ameritech Illinois to include the arrangement as requested by the CLEC.

Joint Applicants also explain that the “porting” of “out-of-region” interconnection agreement terms and conditions depends in part on the actions of its customers/competitors in the CLEC community. Joint Applicants maintain that imposing additional penalties, such as monetary penalties, for non-compliance with these commitments would create perverse incentive structures in the negotiation of interconnection agreements and would likely have the end result of being counterproductive.

Joint Applicants stated that to the extent "non-compliance" means that Joint Applicants have failed to meet Commitments B or C by not participating in the collaborative process or providing copies of interconnection agreements to the Commission, the Commission should bear in mind first that non-compliance with Commitments B or C would not affect Joint Applicants' Commitments A or D and second that the Post Exceptions Proposed Order already has an enforcement mechanism in the form of allocating an increased percentage of savings.

Finally, Joint Applicants contend that the Commission should bear in mind that the proposed merger will not change the Commission's existing enforcement authority.

Each of these commitments will be fulfilled through the direct actions of Ameritech Illinois, over which the Commission will maintain its full regulatory authority.

Staff's Position

Staff witness Graves testified that the Joint Applicants' commitment may increase the types of arrangements/agreements available to CLECs within Illinois. (Staff Ex. 4.02 at 17). He noted however, that it was not possible for Staff to comment on the utility of SBC's in-region arrangements/agreements because Staff has not had the opportunity to review those agreements. (Id.)

In response to the Joint Applicants' Commitments A through C, Staff witness Graves testified that Staff does not oppose the Joint Applicants' position that state specific pricing should not be incorporated into Illinois. (Id. at 18). He noted that the Commission has undertaken extensive proceedings to develop the appropriate prices for UNEs and wholesale services within Illinois pursuant to the requirements of PUA and TA96. (Id.) Mr. Graves opined that it is appropriate for the Commission's pricing decisions to govern interconnection agreements within Illinois. (Id.) Furthermore, Mr. Graves noted that Staff supports the Joint Applicants' condition that importation must be in accordance with Illinois state law and policy. (Id.)

In addressing one of the infirmities of Commitment C, Mr. Graves noted that this commitment provides that the Joint Applicants will only provide SBC's out-of-region interconnection agreements (whether negotiated as an ILEC or a CLEC) to the Commission upon request. Amended Joint Application, Ex. 5 at 1. He viewed Commitment "C" to mean that SBC's out-of-region arrangements/agreements will not be available to CLECs in an efficient manner. (Staff Ex. 4.02 at 22). He opined that unless the Commission requests each and every one of SBC's out-of-region arrangements/agreements on an on-going basis, those arrangements/agreements will be filed across the nation, in up to 49 other state commission offices. (Id.) He noted that CLECs will have to peruse the filings in each state commission's office to determine which arrangements/agreements may be available within Illinois.

With respect to Commitment D, Mr. Graves noted that it contains exceptions which are too expansive and which eliminate a large part of the commitment's benefits. (Id. at 19). He testified that that if SBC were to negotiate arrangements/agreements with Ameritech Illinois as a CLEC, other CLECs would have the benefits of those agreements within Illinois pursuant to Section 252(i). (Id.) Mr. Grave notes that Section 252(i) allows all CLECs to opt into agreements (or portions thereof) under the same terms and conditions as the original, negotiating/arbitrating CLEC unless one of two conditions exists, namely that, unless the ILEC proves that (1) the ILEC's "costs of providing a particular interconnection, service, or element to the requesting telecommunications carrier are greater than the costs of providing it to the telecommunications carrier that originally negotiated the agreement," or (2) "the

provision of a particular interconnection, service, or element to the requesting carrier is not technically feasible." 47 C.F.R. Sec. 51.809(b).

Mr. Graves testified that the Joint Applicants' exceptions to commitment "D" go beyond Section 252(i)'s exceptions allowing SBC to refuse an arrangement/agreement to a requesting CLEC in Illinois if that CLEC is not "similarly situated." (SBC-Ameritech Ex. 1.3 at 11). He notes that SBC tells the Commission that a determination of "similarly situated" shall be expansive, including (but not limited to) consideration of regulatory and market circumstances, network architecture, OSS and universal service reform. (Staff Ex. 4.02 at 20). He further notes that SBC's "similarly situated" exception clearly goes beyond any exception allowed by Section 252(i). (Id.) According to Mr. Graves, the FCC addressed and rejected allegations by incumbent carriers that Section 252(i) requires requesting CLECs to be similarly situated. FCC Local Competition Order at para. 1302, 1318. Based on this analysis, Mr. Graves reasoned that SBC's expanded exceptions means that CLECs in Illinois will not obtain the same benefits from SBC's provision within Illinois of the arrangements/agreements negotiated by SBC's CLECs out-of-region as if SBC's CLEC negotiated those same arrangements/agreements within Illinois and CLECs were able to opt into those agreements within Illinois pursuant to Section 252(i).

Mr. Graves also opined that SBC's open list of considerations for the determination of "similarly situated" carriers will provide SBC with a means of delaying CLEC adoption of arrangements/agreements within Illinois. (Id. at 20). He noted that Section 252(i) was intended to make the adoption of interconnection arrangements/agreements more efficient and expeditious by removing the need for (and thus the time associated with) negotiation and arbitration. See, FCC Local Competition Order at para. 1311, 1321. Mr. Graves testified that SBC's unilaterally mandated exemptions to Commitment "D" will necessitate CLECs to undertake lengthy dispute resolutions prior to implementation and inhibit the pro-competitive benefits that would otherwise accrue within the Illinois local exchange market if SBC had negotiated the arrangements/agreements within Illinois as a CLEC, thereby automatically making the arrangements/agreements available to all other CLECs within Illinois pursuant to Section 252(i). (Staff Ex. 4.02 at 21.)

AT&T's Position

AT&T specifically addressed Interconnection Commitments A, B and D.

AT&T witness pointed out that with respect to provisions that exist in agreements where the Joint Applicants provide service as ILECs, the Joint Applicants commit to extend these same terms (except for price) to Illinois – but only if the Joint Applicants had (1) voluntarily agreed to the provision initially, and (2) the Joint Applicants believe the provision is not otherwise contrary to state law or policy. AT&T Ex. 1.2 (Gillan DOR), at 10-11.

Mr. Gillan testified that the Commission should not expect Commitment A to improve competitive conditions in Illinois. He noted that there are two significant limitations to this commitment that render its value meaningless. Id. First, the commitment only involves provisions that SBC has voluntarily agreed to in other states. According to Mr. Graves, provisions that actually promote competition, however, are typically the result of arbitrations (either in the initial round or, if overlooked, in the second round). This "commitment" essentially leaves the CLEC in the same position as it started – relying on SBC's management (and its decisions as to what to agree to) as the initial arbiter of its opportunity for interconnection. To obtain anything else under SBC's commitment requires arbitration – but then, the CLEC could have arbitrated to begin with. Id.

Second, Mr. Gillan pointed out that SBC proposes additional interpretative limitations that are as important for their effect on the negotiation/arbitration process as they are for (whatever) their substantive definition is ultimately determined to be. Specifically, he noted that the Joint Applicants will not offer in Illinois any provision if, *in Joint Applicants' judgment,* there are state-specific reasons in Illinois which would make such offerings technically infeasible or unlawful/contrary to State policy. Id. at 12.

Mr. Gillan found it useful to reduce SBC's Interconnection Commitment A to its elemental components. First, he noted that SBC begins with only that universe of interconnection provisions that it already agrees with. SBC then reserves the right to deny an entrant in Illinois access to even this list, if it decides that a provision is inappropriate to Illinois. While the entrant has the recourse to challenge SBC's view in an arbitration proceeding, that process negates the very point of a commitment that should be designed to expedite the importation of provisions that are favorable to competition to Illinois. Id. at 13.

Mr. Gillan pointed out that if Joint Applicants had wished to design a commitment that would accelerate the process while still addressing SBC's stated concerns, they could have provided that Joint Applicants would provide CLECs in Illinois the same services, facilities or interconnection agreements/arrangements (except as to price) that any SBC ILEC affiliate has voluntarily negotiated, or has been ordered to provide under an arbitration in another state. To the extent that SBC believed that a particular provision or agreement is not technically feasible in Illinois (or would be contrary to Illinois law or policy), SBC properly would bear the burden of proving with clear and convincing evidence that it should be relieved of the inappropriate obligation. For instance, within a set time (e.g., 30 days) of the approval of any future interconnection agreement/arrangement containing a provision that SBC believes is inappropriate for Illinois, SBC could request a waiver, accompanied by any evidence or testimony in support of its contention. Absent the grant of an exemption, however, the provision should apply automatically. Furthermore, the Joint Applicants should provide the service or facility at issue during the pendency of all rehearings and appeals, instead of delaying until their final appeal is resolved. Id. at 14-15. Mr. Gillan testified that, contrary to the contentions of Joint Applicants, the Illinois Commission would not be

abrogating its role to other commissions, but would simply be establishing its primary stated policy to promote local competition in Illinois. SBC would remain free to argue that a certain provision or arrangement is inappropriate, but it could not use the process to delay or impose costs on its competitors. Id. at 15.

Regarding Joint Applicants Interconnection Commitment B (i.e., to offer in Illinois only the same agreements/arrangements that SBC as a CLEC affirmatively requests in other states), Mr. Gillan testified that this commitment also contains an unreasonable limitation. Mr. Gillan noted that the Joint Applicants' proposal would not even include the agreements/arrangements that the Joint Applicants expect to use in their out-of-region entry. The Joint Applicants acknowledge that they will most likely adopt a preexisting agreement, yet they specifically exclude extending the terms to Illinois of any agreement that they obtain in this manner. Id. at 15-16.

Mr. Gillan pointed out that the most competitively significant provisions from another state will have already been arbitrated by another entrant. Mr. Gillan noted that even this self-executing caveat – a caveat that would effectively eliminate the entire universe of potential agreements that any entrant would want extended to Illinois -- is not the final limitation that SBC would place on its "commitment." He explained that SBC is not even agreeing to offer in Illinois a provision that it has uniquely requested but, rather, is only agreeing to either offer the provision or assume the burden of proving why such a form of interconnection arrangement or "capability" should not be implemented in Illinois. Id. at 16-17.

Mr. Gillan testified that aside from technical legal questions over the "burden of proof," this "commitment" is not any different than the status quo. He noted that an entrant would raise this issue in arbitration, and that SBC would try to explain it away. There is no improvement in competitive conditions, no simplification of the request/arbitration process, and no real change in SBC's incentive to balance its out-of-region entry with an obligation to open the market here. Id. at 17.

Mr. Gillan testified that the Joint Applicants have also placed additional caveats on this "commitment." He noted that although it is difficult to be certain, it appears that in Exhibit 6 to the Amended Petition, the Joint Application added another critical limitation as to whether a provision that its obtains as a CLEC would be offered in Illinois. This limitation is a determination of whether a UNE, service or interconnection arrangement is "technically feasible" or whether the requesting CLEC is "similarly situated" and that such determination will include consideration of regulatory, network, and market circumstances surrounding the request of SBC/Ameritech's CLEC and the request made of SBC/Ameritech's incumbent LEC, including but not limited to network architecture, OSS, and universal service reform. Id. at 17-18.

Mr. Gillan pointed out that SBC never explains how either technical feasibility – or any legitimate consideration of "similarly situated" – would appropriately comprise regulatory factors, market circumstances or universal service reform. All that can be

reasonably concluded from this "commitment," he noted, is that any arrangement that can successfully navigate each of these proposed filters is not likely to present much of a threat to Ameritech's continued dominance in Illinois. Id. at 18.

Mr. Gillan testified that a provision that would have more value to the competitive process would have been to require that any UNEs, services, facilities, or interconnection arrangements contained in an interconnection agreement signed by a CLEC affiliate of SBC/Ameritech with an incumbent LEC to be offered (except as to price) in Illinois. Further, he opined that other CLECs should be able to adopt this agreement using the Most Favored Nations process, as they could with any other agreement. Id. at 19.

Moreover, Mr. Gillan thought it unreasonable to exclude price-related terms on such a blanket basis. Mr. Gillan noted that although SBC legitimately points out that many cost-related factors are state-specific and, as a result, it may not be appropriate to blindly import to Illinois prices established in other jurisdictions, the validity of SBC's observation is not without limit. Mr. Gillan pointed out that although certain cost-factors are state-specific (for instance, the particular configuration of the network in a particular state), there are many cost-factors (such as the cost of network equipment) that are not. AT&T Ex. 1.2 (Gillan DOR), at 20. He stated that the important point is that while the consequence of lower input costs (i.e., lower prices) may not be portable between states, the lower input values themselves should be. That is, he explained, as other jurisdictions update cost models to reflect more current technology prices, the Commission could require that SBC file with the Commission the lowest input values used by any Commission for comparable equipment. Id. at 20.

Sprint's Position

Sprint specifically addressed only Interconnection Commitments A and D.

Interconnection Commitment A. Sprint essentially echoes AT&T's arguments on this issue. Sprint states that the purpose of merger conditions is to "reduce entry hurdles enough to allow at least as much local exchange competition as would have occurred absent the merger." (Sprint Ex. 2.2, p. 19). Sprint asserts that the interconnection commitments do not lower hurdles for competitors. The commitments do not change the status quo. With regard to Interconnection Commitment A, Sprint contends that only non-controversial terms and conditions will be available in Illinois, since most pro-competitive provisions purportedly will have been arbitrated. Joint Applicants' argument that the Commission would be abrogating its authority if it accepts arbitrated terms from other jurisdiction is misplaced. If this Commission decides to approve interconnection terms from other states, it has that authority to voluntarily do so. In addition, Sprint asserts that the limitations with respect to technical feasibility and price mean that this commitment will not be self-enforcing and that CLECs will still have to incur litigation costs to obtain the arrangements they desire, which they could have done anyway under TA96. The terms that CLECs want most have been arbitrated

in other forms, not agreed to voluntarily. Thus, Sprint asserts that there is little advancement from the status quo.

Interconnection Commitment D. With respect to Interconnection Agreement D, Sprint argues that the limitations regarding technical feasibility and a "similarly situated" requesting CLEC prevent this commitment from being self-enforcing or doing much to change the status quo. Due to the exception regarding the non-availability of terms that Joint Applicants' CLEC obtains through 252(i) elections, Joint Applicants will have an incentive to only opt into agreements out of region, and thus few interconnection terms will even be eligible for importation into Illinois under Commitment D.

As to both commitments A and D, Sprint asserts that the lack of specific enforcement mechanisms is troubling. Sprint also argues that there is no reason not to import prices from other states if there is not already a price established in Illinois, and contends that such prices could be used on an interim basis pending approval of an Illinois-specific price. Finally, Sprint urges the Commission to require Joint Applicants to make the Texas Proposed Interconnection Agreement available in Illinois, contending that this represents a "best of class" agreement developed through months of negotiations with several parties, including many involved in this case. Of particular significance, SBC witness Kahan could not identify one interconnection term or arrangement that could navigate the maze of exceptions and conditions and actually could be implemented in Illinois.

ACI's Position

ACI proposes that Joint Applicants be required to make available to any requesting CLEC any term or conditions in any interconnection agreement that applies anywhere in their combined region, without limitation.

Covad's Position

Covad recommends that Interconnection Agreement A be revised to require Joint Applicants to make available to CLECs any and all terms and conditions from their interconnection agreements in other states, including arbitrated terms and conditions. MGC and ACI support this recommendation. Covad asserts that this will best promote competitive entry in Illinois and that the Commission would not be abrogating its authority over interconnection agreements because it purportedly would still have the opportunity to review and approve each new agreement. Covad also asserts that SBC's arbitration with Covad in Texas demonstrates that Interconnection Commitment A is a hollow promise, in that the arbitrated terms of any agreements resulting from that proceeding would not be available to CLECs in Illinois.

Nextlink's Position

Nextlink believes that the Joint Applicants should be compelled to offer all UNEs, services, facilities and interconnection agreements/arrangements terms and conditions

whether they are offered voluntarily by Joint Applicants or as a result of arbitration. Nextlink disputes that the Commission would be abrogating its authority, and in fact believes that the Commission would be asserting its authority to ensure that best practices are brought to Illinois. Nextlink is also concerned that limiting this condition only to voluntarily agreed to terms would provide Joint Applicants incentive to arbitrate all terms and conditions to preclude them from being offered in Illinois. Nextlink also believes that this condition should apply to the entire SBC/Ameritech region and not just to SBC's current incumbent service territories. Moreover, it is Nextlink's position that this condition also should apply to terms and conditions obtained by a CLEC affiliate of SBC/Ameritech from an incumbent CLEC. In the event a term or condition is found not to be technically feasible, Nextlink maintains that Joint Applicants must, pursuant to a Commission compliance proceeding, take the necessary steps to make such term or condition technically feasible in Illinois unless the Commission approves a reasonable alternative. Nextlink also maintains that penalties should apply if the Joint Applicants fail to fulfill their commitments.

Joint Applicants' Response

Interconnection Commitments A and D. Regarding the criticisms of their proposal to make terms and conditions from their incumbent LEC and CLEC interconnection agreements available in Illinois, Joint Applicants contend that other parties are overreaching. Joint Applicants state that their commitments go far beyond anything that is or could be required under TA96 and, to their knowledge, are unique in the entire industry. These commitments, they argue, were intended to and do address any concerns about SBC's unique negotiating abilities as an incumbent LEC or CLEC. They further assert that the qualifications on their commitments are perfectly reasonable, and note that the Staff generally agrees. Among other things, they explain that other states may well have different policies or concerns and that the mere fact that SBC may have lost an issue in arbitration in another state does not mean that it should be forced to surrender its arguments in Illinois. Finally, Joint Applicants state that requiring them to import arbitrated terms and conditions would, in fact, force this Commission to abrogate its authority, as such terms and conditions would have to be treated as "negotiated" upon review of the agreement, and negotiated terms and conditions are subject to less stringent standards under TA96 than are arbitrated terms and conditions; indeed, negotiated terms and conditions do not have to comply with TA96 at all.

With regard to the claims that their commitments do little to eliminate the need for arbitration, Joint Applicants state that their commitments were intended to streamline the negotiation process to the extent possible, and in fact do so. They note that their commitments do not eliminate their duty to negotiate in good faith with requesting CLECs, and instead simply eliminate the need to negotiate at all on certain terms and conditions that are being made available from other states. Joint Applicants add that arbitration has not been a routine occurrence in SBC's states; SBC has entered approximately 500 interconnection agreements, but only 34 of those required

arbitration. Thus, they contend that the other parties' concerns about litigation costs and delay are overstated. They also contend that Covad's testimony about an arbitration proceeding in Texas is entirely irrelevant to this proceeding on reopening. Moreover, cross-examination showed that testimony to be highly misleading and that the delays Covad complained of were actually caused by itself.

Interconnection Commitment C. As for Staff's concern about the statement that agreements from other states would be provided to the Commission "upon request," Mr. Kahan explained that this term was included to give the Commission flexibility in deciding whether and to what extent it wants to maintain a complete file of all of SBC's interconnection agreements, of which there are more than 500. The "upon request" language simply allows the Commission to control its level of involvement.

Commission Analysis and Conclusion

We conclude that Joint Applicants' proposed commitment is unresponsive to our questions~~,~~ The end result of these alleged commitments that are riddled with exceptions is the status quo—a CLEC must initiate interconnection negotiations, attempt to identify a particular practice that fits within the commitments and then seek arbitration when Joint Applicants and a CLEC disagree. Of course current law, Section 252 of the Telecom Act, already gives CLECs these remedies. –In other words, Commitments A through D do little to reduce the hurdles that competitors must face in attempting to break into the Illinois local exchange market.

Given the numbers of exceptions, Joint Applicants can rely on any number of reasons as to why a particular term cannot be imported into Illinois: it is not technically feasible; it is not economically feasible; it does not comport with Illinois policy; differing market circumstances exist, etc. The Commission finds that the interconnection commitments presented by Joint Applicants have little hurdle reducing effects. There are too many exceptions and limitations that render the commitments meaningless. The Commission finds that the availability of interconnection terms from other forums, whether they be arbitrated, negotiated, or adopted from other agreements, will reduce the hurdles to competitors.

Thus, the Commission adopts the following language as a condition to its approval:

Each ILEC (defined as each operating company of the merging parties) shall make available to any requesting CLEC any term or condition that it (or any of its LEC affiliates) is obligated to provide to a CLEC under an existing interconnection agreement, arbitration decision or other state ruling throughout the SBC and Ameritech region. Such term or condition shall be treated as if it were a term or condition subject to Section 252(i) obligations, shall be made available within 30 days of the request, and thereafter subject to regulatory approvals, as necessary, pursuant to Sections 251 and 252 of the Act. There is no sunset to this provision.~~is sufficiently detailed to satisfy any concerns about its implementation, and is subject to effective enforcement measures. We further conclude that the proposed interconnection commitment will have procompetitive benefits accruing to both CLECs and end-users in Illinois that would not~~

exist absent the merger.

As a starting point, we agree with Joint Applicants that TA96 does not require an incumbent LEC to offer "most favored nation" treatment to CLECs based on interconnection agreements that the incumbent LEC or its affiliate may have in other states. Thus, Joint Applicants' agreement to give CLECs such "most favored nation" treatment with respect to arrangements that SBC has negotiated in other states is a substantial step beyond current legal requirements. It therefore represents a procompetitive benefit to Illinois that would not exist without the merger, because it allows CLECs to opt into a potentially much broader range of arrangements than previously was available. In addition, Joint Applicants have committed to make available in Illinois certain arrangements that they are able to obtain in their role as a CLEC. This, too, goes well beyond any current legal requirement and represents a procompetitive benefit for Illinois that would not otherwise exist.

Certain parties have criticized Joint Applicants' commitment as being vague or illusory. One purpose of the follow-up questions in the June 15 letter was to clarify the commitment and obtain more detail about its implementation. We believe that Joint Applicants have provided the detail we sought, and that the limitations and caveats placed on the commitment are appropriate. Indeed, in many cases the limitations – such as that price terms from other states not be automatically imported to Illinois – are supported by Staff and are necessary to preserve this Commission's role in shaping competitive policy in Illinois. We believe one of AT&T's proposals best meets the problems outlined above by SBC and the CLECs. Joint Applicants should provide CLECs in Illinois the same services, facilities or interconnection agreements/arrangements, except as to price, that any SBC ILEC affiliate has voluntarily negotiated, or has been ordered to provide under an arbitration in another state. If SBC believes that a particular provision or agreement is technically unfeasible in Illinois, on contrary to Illinois law or policy, SBC would bear the burden of proof of same. SBC could also request a waiver of any provision or agreement/arrangement or arbitration.

Likewise, while there may be future disputes about what arrangements from other SBC states are "technically feasible" in Illinois or whether a CLEC in Illinois is "similarly situated" to the SBC CLEC, that is not a reason to reject or modify the commitment. Technical feasibility is already a limitation on "most favored nation" rights (*see* 47 C.F.R. § 51.809); the only difference now is that Illinois CLECs will have a

~~potentially much broader group of arrangements to choose from in seeking to adopt provisions from other contracts, which benefits the CLECs. That represents a benefit that would not exist without the merger.~~

~~Regarding the concern of some parties that Interconnection Commitment D does not include terms and conditions obtained by the SBC CLEC through most-favored nation rights, we agree with Joint Applicants that importation of such terms is not necessary. The theory prompting Interconnection Commitment D is that the SBC CLEC could exercise unique bargaining power to extract unique contract terms from out-of-region incumbent LECs. The exercise of most-favored nation rights requires no bargaining power or special expertise at all; the SBC CLEC would just get the same deal as a prior CLEC. Thus, we will not expand Interconnection Commitment D beyond the specific Commitment made by Joint Applicants.~~

~~We believe that the proposed collaborative process among Joint Applicants, Staff, and other parties will help simplify the adoption of terms from out-of-state interconnection agreements and significantly aid us in resolving any disputes that may arise in specific cases. We strongly encourage the parties to work together in this process to resolve disputes short of litigation. We also will seriously consider the proposals that one or more Commissioners participate directly in the collaborative process, though we need not resolve that issue here.~~

~~Finally, it should be remembered that these commitments do not affect this Commission's authority over Ameritech Illinois. This Commission will retain its full authority to ensure compliance with each of these commitments and any other provisions of the order approving this merger.~~

SHARED TRANSPORT

3. ***The manner, necessary actions and timetable by which Joint Applicants would provide "shared transport" as recommended by the Commission Staff in this proceeding. Further, until the "Illinois version" of shared transport is offered, when the Commission can expect the implementation of shared transport in the same manner as SBC has provided in Texas, and the manner, necessary actions and timetable by which this will be accomplished.***

Joint Applicants' Position

Joint Applicants maintain that the Supreme Court's *IUB* decision which vacated the FCC's rule establishing a shared transport UNE (Rule 319), as well as the Supreme Court's June 10, 1999 vacatur of the Eighth Circuit's affirmance of the FCC's *Third Order on Reconsideration* in CC Docket 96-98, means that Ameritech Illinois currently has no legal obligation to provide shared transport. Nevertheless, subject to the outcome of the FCC's pending UNE Remand Proceeding, Joint Applicants are willing to

implement a form of shared transport within 30 days of the merger closing date in Illinois. Joint Applicants refer to this as the "interim" version. In addition, within one year of the merger closing, Joint Applicants are willing to implement and offer in Illinois the same version of shared transport (involving use of Advanced Intelligent Network ("AIN") facilities to perform a 10 digit number look-up) as SBC has implemented in Texas. Joint Applicants refer to this as the long-term solution. Joint Applicants believe that the interim and long-term solutions fully comply with, and respond to, concerns raised by Staff and the Commission in this proceeding.

Joint Applicants state that shared transport, also generically called common transport, is a form of interoffice transport and can be provided only in combination with local switching. Joint Applicants define shared transport as a shared interoffice transmission path between Ameritech Illinois end office switches, and between Ameritech Illinois end office switches and tandems, that permits CLECs to connect the local switching element purchased from Ameritech Illinois with shared transport, to transport the local call dialed by end-users using the local switching element to its destination through the use of Ameritech Illinois' transport network. Joint Applicants state that, in order to function, Common/Shared Transport cannot be physically separated from local switching and is not offered separate and apart from local switching.

Joint Applicants' Commitment to Provide Shared Transport

Joint Applicants state that even though there is no current legal obligation under the 1996 Act to provide shared or common transport, they commit to make shared transport available – as described in their submissions – within 30 days of the merger closing date. This commitment would cease if and to the extent that, as a result of the FCC's pending UNE Remand Proceeding or any judicial review thereof, no new legal obligation to provide shared transport is imposed on ILECs. Joint Applicants assert that it would be improper to require the continued provision of shared transport if the FCC, or a court, determines that, for whatever reason, ILECs should not be required to provide shared transport. Indeed, they argue that there is no rationale by which a single entity in the industry should continue to have to comply with such an unnecessary or nullified requirement. However, the final outcome of the UNE Remand Proceeding (including any judicial review thereof) is likely to take one or more years. Consequently, Joint Applicants assert that their commitment will certainly accelerate deployment during this period of legal uncertainty.

1. Interim Solution Within 30 Days Of Merger Closing

To accelerate the availability of a shared transport offering, Joint Applicants commit to deploy an interim form of shared transport within 30 days of merger closing. Joint Applicants state that the interim solution avoids or addresses each of the technical and network issues that Ameritech Illinois identified in its TELRIC tariff filing.

Dedicated links and custom routing. Joint Applicants would not require the use of dedicated transport or custom routing to complete a call using unbundled local switching and shared transport to a third party switch. Rather, Joint Applicants would make available a modified version of transiting that does not require a dedicated end office integration (EOI) transit trunk. This is similar to the shared transport offering that SBC makes available.

Measuring terminating call detail. Ameritech Illinois states that it does not have the ability to record terminating detail based on its current network architecture. However, Joint Applicants would implement an interim solution that involves the use of originating and terminating factors and a settlement procedure with each CLEC purchasing local switching and shared transport to allocate appropriate access charge revenues. Thus, when an end-user customer, who is served by a CLEC using Ameritech Illinois' shared transport facilities, makes or receives an interLATA call, Ameritech Illinois would collect relevant access charges from the interexchange carrier and then make payment to, or receive payment from, the CLEC using local switching based on the difference between access charges and applicable charges for the UNEs used to provide the access service. Factors and settlement procedures have been widely used within the telecommunication industry in many contexts, for many years.

Identifying the originating local carrier. Ameritech Illinois states that it currently does not have the short-term ability to identify the originating local carrier terminating a call to a CLEC's local switching port. However, Joint Applicants would implement a concept known as originating carrier pays to address this limitation. Under an originating carrier pays arrangement, Ameritech Illinois would charge a CLEC using Ameritech Illinois' local switching and shared transport facilities for usage of local switching to both originate and terminate such traffic. Ameritech Illinois, however, would not charge a CLEC using Ameritech Illinois' unbundled local switching for usage at the terminating switch when it is terminating traffic delivered by shared transport facilities. Nor would Ameritech Illinois create message records for such terminating usage, since reciprocal compensation would not be eligible for collection by the terminating carrier in such circumstances. Joint Applicants contend that this approach alleviates the existing network fact that Ameritech Illinois does not have the capability to record terminating local calls. If the originating carrier pays both originating and terminating ULS, recording at the termination office for a local call is unnecessary. Joint Applicants believe that this is a reasonable interim solution which accelerates the availability of shared transport in a way that makes it operationally implementable in the immediate near term.

Providing common/shared transport on an unbundled basis. The Supreme Court has expressly reinstated the FCC's rule which required incumbent LECs to provide pre-assembled combinations of unbundled network elements, assuming each element in the combination is capable of being purchased separately. Although Ameritech Illinois maintains that shared transport is not "unbundleable" as defined by the Supreme Court, that issue will be resolved in the FCC's pending UNE Remand

Proceeding. Until that issue is finally resolved, Joint Applicants would provide shared transport combined with local switching (in fact, they state, there is no other way to provide it).

Joint Applicants believe that the proposed interim solution described above should be acceptable to the Commission because: (i) it maximizes Ameritech Illinois' ability to offer shared transport quickly; (ii) it minimizes Y2K implications by avoiding any significant network or billing modifications before the end of this year; and (iii) it provides a reasonable period of time to implement a more long-term solution that relies on a network technology and that does not require the use of factors or settlements.

2. Long-Term Solution Within One Year Of Merger Closing.

Joint Applicants explain that the major difference between Ameritech Illinois' and SBC's capabilities with regard to the “long-term” AIN-based version of shared transport relates to the type and scope of deployment of different AIN technologies. In Texas, SBC has deployed an AIN network architecture that enables SBC to use AIN triggers to identify UNE ports, which in turn enables billing of usage sensitive charges. This AIN approach eliminates the need for factors or settlements for both local and toll calling. Ameritech Illinois has represented to the Commission that it has not deployed this AIN network capability and that the cost and time to deploy such capability is significant and substantial. However, Joint Applicants commit to begin deploying shared transport in Illinois, in the same manner that SBC has deployed shared transport in the state of Texas (using AIN triggers), starting within one year of the merger closing date. Joint Applicants believe that deployment of shared transport in this manner fully complies with this Commission's TELRIC Order and the FCC's now-vacated Rule 319. Further, Joint Applicants commit that they will offer such shared transport in Illinois, under terms and conditions (other than rate structure and price) that are substantially similar to the most favorable terms offered by SBC to CLECs in Texas as of the merger closing date.

a) ***The positions stated by the Applicants appear to be a shift from stances originally taken on this matter. However, comments by the intervening parties in this docket will be most helpful in determining the merit of the Applicants' commitments.***

Joint Applicants respectfully disagree with the Chairman that they have shifted their stance on this matter. Joint Applicants state that they have consistently maintained that the "Illinois version" of shared transport, *i.e.*, shared transport physically unbundled from switching, is not technically feasible (or even physically possible). When SBC General Counsel Jim Ellis appeared before this Commission, he committed on behalf of Joint Applicants to use SBC's experience in Texas to work out a solution on the shared transport issue. In response to the Commission's specific questions, the outline of that solution has been provided by Mr. Appenzeller with the background from Mr. Hopfinger’s Direct Testimony on Reopening.

b) ***Is it correct to say that the Applicants will not provide any version of shared transport in Illinois, regardless of the outcome of this proceeding, if the FCC or the courts rule that shared transport is not a UNE?***

Joint Applicants state that the issue of whether shared transport is a network element that must be unbundled is currently before the FCC in its UNE Remand Proceeding. As a result, the issue may not be definitively resolved for some time. In the meantime, Joint Applicants would begin deploying shared transport in accordance with their commitments. However, if the FCC or a reviewing court ultimately determines that shared transport is not a network element that must be unbundled, Joint Applicants reiterate that they would be entitled to cease providing shared transport at that time.

c) ***What are the specific enforcement mechanisms which would be used by the Commission in the event of non-compliance with the commitments made by the Applicants?***

Joint Applicants responded by referring to their previous responses on the issue of enforcement.

Staff's Position

In this reopened proceeding, there were three versions of common transport addressed by the parties. The three versions were: a) the ICC/FCC version (requiring common transport on a stand-alone basis); b) the SBC/Texas "interim solution" (involves the use of originating and terminating factors and a settlement procedure to allocate appropriate access charge revenues) and; c) the SBC/Texas "long term solution" (involves the use of AIN network architecture).

On re-opening, Staff witness Gasparin reiterated his position that the Joint Applicants should continue to explore the issues surrounding the technical feasibility of offering common transport as an unbundled network element on a stand alone basis. (Staff Ex. 5.02 at 2). Mr. Gasparin averred that both this Commission and the FCC have ordered Ameritech to provide common transport on unbundled network basis. While acknowledging that the FCC's rules requiring the offering of common transport were vacated by the U.S. Supreme Court , Mr. Gasparin testified that the Commission's order was still in effect. (Id.).

Although Mr. Appenzeller testified that there are technical difficulties in the provisioning of this service and that the service cannot be provided at this time, Mr. Gasparin recommended that the Joint Applicants continue to explore the technical feasibility regarding the unbundling of common transport and to provide a semi-annual report to this Commission and other interested parties which delineate their activities in exploring solutions to the common transport unbundling issue. He noted that a similar

commitment had been made in Texas as shown in the "Joint Applicants' Response to Commission's June 4 List Of Issues And Joint Applicants' Additional Commitments" - in Attachment 3.1 entitled "Local Switching/Shared Transport Texas" at 1.3.1 page 1.

In light of the commitments made by the Joint Applicants, Staff recommends that the commitments made by the Joint Applicants relative to this issue be adopted by the Commission and be included in the final order.

Intervenors' Position

AT&T witness. Turner testified that the UNEs of Shared Transport – also referred to as Common Transport – and Local Switching are essential components of the "UNE Platform" ("UNE-P") or combination of unbundled network elements provided for in AT&T's Commission-approved Interconnection Agreement with Ameritech.

Mr. Turner defined Shared Transport as an unbundled network element consisting of the same interoffice transport facilities used by Ameritech to transport the calls made by its own local exchange customers. As such, Shared Transport is a common interoffice transmission path between Ameritech switches**.** Mr. Turner explained that CLECs can use the Shared Transport UNE in conjunction with the Unbundled Local Switching element to transport local calls dialed by the Local Switching element to their destination over Ameritech's Shared Transport network. With Shared Transport, CLECs can utilize Ameritech's common transport network between an Ameritech tandem and an Ameritech end office. Mr. Turner pointed out that Shared Transport has been designated by the FCC as an unbundled network element. The FCC has ordered Ameritech to provide it both in its First Report and Order dated August 8, 1996, and in its Third Order on Reconsideration dated August 17, 1997. This Commission also ordered Ameritech to provide Shared Transport as defined by the FCC in its Order dated February 17, 1998 in Dockets 96-0486/0569. Id. at 3.

Mr. Turner explained that absent the ability to share the in-place interoffice transport facilities, CLECs would need to build or purchase dedicated interoffice transport facilities that essentially duplicate the existing facilities of the incumbent to provide call routing for their local service customers. He noted that this would be prohibitively expensive and wholly unnecessary, since the existing facilities have sufficient capacity to transport current traffic volumes. Moreover, he pointed out that for Ameritech to implement such an arrangement would require incredibly complicated customized routing that would be prohibitively expensive and technically daunting for CLECs and Ameritech to implement. Id. at 3-4.

Mr. Turner described the Platform as an end-to-end combination of network elements that permits a CLEC to offer a full range of telecommunications services to end users and other carriers. He explained that the Platform consists of the Network Interface Device, Unbundled Loop, Local Switching, Shared (*i.e.*, Common) Transport, Signaling and Call-Related Databases, Tandem Switching and Ameritech-provided

Operator Services and Directory Assistance. Id. at 4. Mr. Turner testified that Ameritech has not provided the Platform in Illinois. He explained that because Shared Transport is an essential element of the Platform, Ameritech does not offer the Platform as long as it refuses to provide CLECs with the Shared Transport element. Id. at 4.

Mr. Turner testified that Ameritech has adamantly resisted providing Shared Transport and the Platform in a series of regulatory and appellate proceedings dating back to the fall of 1996. With respect to the "interim solution" for shared transport that Joint Applicants have not proposed, Mr. Turner testified that he found it galling for Joint Applicants to present as a "creative" solution today the exact same proposal that AT&T made to Ameritech nearly two years ago. He explained that AT&T and Ameritech in the summer of 1997 discussed many of the issues identified in Mr. Appenzeller's testimony and AT&T devised a proposal – dubbed "Rough Justice" – that was identical to Ameritech's current "interim solution." Mr. Turner noted that Ameritech even included that proposal in its testimony to the FCC in connection with its Section 271 Application in Michigan. Clearly, he noted, Ameritech could have implemented this solution nearly two years ago. Instead, Ameritech chose to manipulate the legal process, at great expense and loss of time to all concerned, in a calculated effort to avoid its legal obligations. Accordingly, Mr. Turner asserted that Ameritech's "interim solution" merely confirms that it has been playing a series of semantics games with the Commission and with CLECs over Shared Transport. Id. at 7-8.

Further, Mr. Turner testified that the "interim solution" veils what in reality is a set of problems associated not with Shared Transport but with implementing the Unbundled Local Switching element. He explained that in 1996, Southwestern Bell, while negotiating access to unbundled elements for its region, determined that it would provide Common Transport (*i.e.*, Shared Transport in Illinois) without dispute. He noted that it was not until the middle of 1997 that Southwestern Bell notified AT&T that it would require the implementation of an AIN solution to solve at least three implementation problems associated with the Unbundled Local Switching (not Shared Transport) element. The AIN "solution" has absolutely nothing to do with the Shared Transport unbundled element, however. In light of the above, Mr. Turner contended that Ameritech's eleventh-hour offer of the AIN solution as the permanent means to provide access to the Shared Transport element is simply its effort to "spin" once again why it has not provided access to this unbundled element up to this point. Id. at 9-10.

Moreover, Mr. Turner testified that the "interim solution," which AT&T developed two years ago, is practically useless in today's circumstances. Without the ability to order the UNE Platform electronically, it might as well not be available at all from the standpoint of a CLEC desiring to serve mass-market customers. Mr. Turner explained that Joint Applicants are saying it will be months before they will have settled on the ordering and other OSS systems that they will implement in the wake of the merger – and these are the systems to which CLECs will have to design and build their systems in order to be able to pass orders electronically to the ILEC. He pointed out that Joint Applicants are, in effect, proposing that CLECs develop complicated and costly

systems that are temporary and would soon have to be replaced when the permanent systems become available. Mr. Turner noted that since SBC has indicated that Southwestern Bell will eventually implement its systems in Illinois, the only prudent course of action would be for CLECs in Illinois to develop interfaces to Southwestern Bell's systems if the merger is to be approved. Mr. Turner pointed out that, to date, AT&T has invested tens of millions of dollars and more than two years of effort to establish system interfaces with Southwestern Bell. At its peak, AT&T had over 200 people working on programming and system design efforts to ensure that AT&T systems properly interfaced with Southwestern Bell's systems. In light of the above, Mr. Turner concluded that Joint Applicants' interim solution is a hollow, if not disingenuous, proposal. Id. at 10-11.

Addressing the Joint Applicants "long term" solution, Mr. Turner testified that the "long-term" solution must be assessed in the context of the necessary OSS and other systems development work that must be accomplished both by SBC/Ameritech and CLECs in order to support the ordering of the Platform. Mr. Turner explained that unless the UNE Platform can be ordered efficiently and reliably (and electronically), it cannot be used by CLECs to serve their customers. Accordingly, the Joint Applicants' "long-term" solution for the UNE Platform is inextricably linked to systems issues. Id. at 11-12.

Mr. Turner testified that the ultimate issue is the manner in which the ILEC and CLECs will work to develop and implement adequate (*i.e.*, at parity with the ILEC's) and reliable operations support systems ("OSS") needed to support the UNE-Platform for the provision of competitive local exchange service. He noted that given that Mr. Viveros' own timeline is two years, it is important to know beforehand whether the system interfaces would be established to Ameritech or Southwestern Bell's systems. Moreover, because Mr. Viveros indicated that Southwestern Bell integrates its acquisitions into Southwestern Bell's systems environment, Mr. Turner testified that the only prudent course of action would be for CLECs in Illinois to develop interfaces to Southwestern Bell's systems in the event the merger were approved. Id. at 14-15.

Mr. Turner pointed out that AT&T and other CLECs have already developed systems that are interoperable with the SBC systems, software, and business rules. Since several CLECs are near entering the market in Texas with a product offering using the UNE-Platform, under the scenario in which the merger were to proceed, the same systems interfaces should be available in Illinois under the same terms and conditions. Id. at 16.

Further, Mr. Turner asserted that it is vital for SBC to have its systems that are interconnected with CLEC systems integrated into Ameritech's systems in a definite period of time. If not, he pointed out that CLECs may build the interface to Southwestern Bell's systems but not have flow-through capability into Ameritech's region due to SBC not completing its own integration with Ameritech. Specifically, the SBC systems that the CLECs will develop interfaces for must be able to interface with

Ameritech's provisioning, maintenance, and billing systems in the Ameritech territory so that orders/requests that are sent electronically to the SBC systems are properly implemented in the Ameritech provisioning and maintenance systems. Id. at 16-17.

Mr. Turner testified that adequate testing of OSS systems will be necessary in any event. He noted that when CLECs develop their interface into the SBC gateway systems – systems that permit many different CLECs to interconnect with SBC and the subtending back-office systems – there would still be a need to ensure that orders and requests flow from these gateways into the actual Ameritech systems that perform the work or hold the information. As such, despite the fact that system interfaces developed by Southwestern Bell in Texas will already be in use, there would still be a need to test the flow-through of orders into Ameritech's back-office systems and ensure that the system interfaces are capable of handling the types and volumes of orders that would be anticipated. The OSS test must be end-to-end, and thoroughly test pre-ordering, ordering, provisioning, maintenance and repair, and billing, including the integration of pre-ordering and ordering. Mr. Turner stated that the FCC's orders have required proof of access to these functions, all of which are imperative for full-scale commercial operation by competitors. Moreover, and following this OSS testing, volume stress testing appropriate to the market should be required over multiple days. Stress testing should occur at commercial volumes, as determined by the expected future demand in a competitive local market. Mr. Turner also emphasized that this volume testing would become even more important if Southwestern Bell incorporates more of its territories into a single systems environment. Id. at 17-18.

Mr. Turner testified that it is vital that a truly independent, technically-skilled third party be engaged to design the testing, conduct it, monitor the results, oversee corrections and retest, and report on the test. Mr. Turner offered that the third-party test entity should act as a "pseudo CLEC" in the sense that it creates and transmits the kinds of orders (known as "order scenarios") to be expected from the CLEC community. Importantly, he noted that independent third party testing can expedite the identification and resolution of problems with SBC/Ameritech's OSS, without being sidetracked into the kind of "finger pointing" that can otherwise arise. More specifically, Mr. Turner asserted that the third party should develop a test plan that would clearly define the scope and methodology of the test, and the entry and exit criteria.

Mr. Turner took issue with Mr. Viveros' position that that testing should not be done. Rather than testing, Mr. Viveros thought that the CLECs should simply send orders to Ameritech. Mr. Turner testified that this position showed little no regard for the value that should be placed on the end user customers in Illinois. He noted that for CLECs to simply send orders to Ameritech would place the service of those customers at risk. He also pointed out that this type of testing would not fully exercise in a disciplined way the variety of order scenarios for which the system interfaces would be developed. Finally, Mr. Turner noted that simply sending orders to Ameritech without any assurance that its systems are volume tested would be irresponsible of all parties.

Mr. Turner concluded that it is essential that comprehensive third party testing be done prior to sending orders that would impact the service of customers in Illinois. Id. at 20-21.

Mr. Turner also disputed Mr. Viveros' position that no penalties should apply. In light of the fact that SBC and Ameritech would be solely responsible for building to the interface standards already agreed to in the Southwestern Bell territory, Mr. Turner stressed that if delays occurred or if the SBC/Ameritech combined entity did not meet its commitments, penalties would be appropriate, indeed essential. Mr. Turner pointed out that the Bell Atlantic/NYNEX merger is particularly telling in this regard. He explained that one of the conditions established by the FCC in permitting that merger to go through was for there to be a single systems interface for CLECs across the 18 state region of the combined entity. However, this has still not been done. Consequently, Mr. Turner asserted that penalties would be the only viable means to put "teeth" into this requirement. Id. at 21.

MCIW's arguments are similar to AT&T's. MCIW contends that its interconnection agreement already requires Ameritech Illinois to provide shared transport and that, in any event, Ameritech Illinois should be required to provide shared transport to CLECs as a condition of this merger regardless of the outcome of the FCC's UNE Remand Proceeding.

Sprint maintains that the Joint Applicants make no commitment here other than to finally comply with applicable law. The Joint Applicants, however, note that the provision of shared transport could expire based upon the FCC's ruling in the Rule 51.319 remand. To reduce hurdles to competitors caused by this merger, shared transport should be available to competitors on an unbundled basis regardless of the outcome of the remand proceeding.
~~Sprint also maintains that shared transport should be available to competitors on an unbundled basis regardless of the outcome of these proceedings.~~

Joint Applicant's Response

Joint Applicants assert that all of the arguments by AT&T and MCIW about what may have been required in the past are irrelevant to their specific commitment here. Ameritech Illinois also denies that shared transport is required by its interconnection agreement with either AT&T or MCIW, and notes that we specifically rejected MCIW's request to require common transport during arbitration of the MCIW/Ameritech Illinois interconnection agreement. As for AT&T's and MCIW's suggestion that shared transport should be mandated regardless of the outcome of the UNE Remand Proceeding, Joint Applicants state that such a requirement would be unfair and discriminatory, singling Ameritech Illinois out from all other incumbent LECs in the country. Accordingly, they argue that AT&T's and MCIW's proposals should be rejected. With regard to Staff's proposal, they state that there is no way to provide shared transport separately from unbundled local switching, but that they will report to

Staff regarding any advances on this topic as they occur, or at the least, on a semi-annual basis.

Commission Analysis and Conclusion

~~We agree with Staff that Joint Applicants' shared transport commitment is responsive to our questions and concerns. We also find that the shared transport commitment is sufficiently specific and subject to adequate enforcement mechanisms. CLECs, especially the large carriers, have long argued for shared transport, and it now will be made available to all who amend their interconnection agreements consistent with Joint Applicants' commitment. Thus, Joint Applicants have committed to do what Ameritech Illinois has stated it would not do on its own, and the commitment therefore represents a procompetitive benefit that will accrue to both CLECs and end-users and that would not exist absent the merger. We also note that the FCC staff has found this commitment to be acceptable.~~

~~As for AT&T's and MCIW's criticisms of this commitment, we do not believe that AT&T's arguments about what Ameritech Illinois could or should have done in the past are relevant to the issues on reopening here or to the impact of the merger, which is our required focus under Section 7-204. We also reject claims that the commitment should not be subject to the outcome of the UNE Remand Proceeding and judicial review thereof. If the FCC or a court finds that shared transport is not a network element that must be unbundled, any requirement that Ameritech Illinois continue to provide it (while no other incumbent LEC has to provide it) would be unfair to Ameritech Illinois and directly inconsistent with federal law. We see no reason to impose a condition that would continue to exist even when directly inconsistent with federal law.~~

Thus, Joint Applicants are ordered, consistent with the commitments made during this re-opened proceeding, to implement a form of shared transport in Illinois within 30 days of the merger closing date. Furthermore, within one year of the merger closing, the Joint Applicants are ordered to implement and offer in Illinois the same version of shared transport that has been implemented by SBC in Texas utilizing AIN facilities. Finally, the Joint Applicants are ordered to continue reviewing the issue of offering shared transport and report to Staff as soon as any change in facts occur on a semi-annual basis. This condition remains even if the FCC determines on remand that shared transport is not a UNE. Since this merger poses significant competitive harms, it is necessary to lower the hurdles for competitors to come to Illinois. Since the provision of shared transport will reduce the competitive hurdles, we find that Joint Applicants must provide the interim and final solutions regardless of the FCC's decision on the UNE remand rulemaking. There is no sunset to this condition as proposed by Joint Applicants.

OPERATIONS SUPPORT SERVICES ("OSS"): IMPLEMENTATION

4. *Implementation timetables regarding integration of Joint Applicants OSS*

processes.

Joint Applicants state that, as a threshold matter, it should be remembered that OSS systems have been developed over time in the 13 states involved in this merger. The OSS systems were in most cases originally developed in a monopoly environment, and were not designed for ordering of UNEs. Joint Applicants further explain that this is a complex and difficult area, complicated by the lack of uniformity of demand by CLECs and the limited number of qualified employees who can perform this work, Y2K work and other ongoing tasks, and that OSS development and integration is not something that can happen overnight. Nevertheless, Joint Applicants have proffered a number of OSS commitments designed (a) to create a comprehensive plan of integration for the Ameritech and SBC's OSS processes; (b) to subject that plan to a collaborative process that will incorporate CLEC input into how OSSs are made available; and (c) to make that SBC/Ameritech OSS process available on a uniform basis throughout the post-merger SBC/Ameritech states.

OSS Commitments

Joint Applicants assert that there can be no single unified timetable for integration of Ameritech's and SBC's OSS. These systems must be considered on a case-by-case basis, in order to provide CLECs in Illinois the benefits of the combined experience and systems of the two companies, with a separate transitional period that is appropriate for each function. That said, Joint Applicants commit to implement a comprehensive plan for improving the OSS systems and interfaces available to CLECs in Illinois. This plan includes the following elements, which address each of the concerns identified in Items 4 and 5 of Attachment A of the June 4 letter. Joint Applicants' plan, which depends in part upon the systems, expertise, and resources that would become available to Ameritech Illinois as a result of the merger, consists of the following commitments:

Application-to-Application Interfaces Commitments

Joint Applicants commit to deploy, within two years after the merger closing, commercially ready, application-to-application interfaces as defined, adopted, and periodically updated by industry standard setting bodies for OSS (*e.g.*, Electronic Data Interchange ("EDI") and Electronic Bonding Interface ("EBI")) that support pre-ordering, ordering, provisioning, maintenance and repair, and billing for resold services, individual UNEs, and combinations of UNEs. Such interfaces would meet the requirements of 47 U.S.C. § 251(c)(3).

Deployment of the application-to-application interfaces would be carried out in three phases.

Phase 1: Within 5 months after the merger closing, Joint Applicants would develop a complete plan of record (including

assessment of Ameritech Illinois' and SBC's existing OSS interfaces, business processes and rules, hardware capabilities, data network, and security protections).

Phase 2: Joint Applicants would seek to obtain collaboratively, within 4 months after completion of Phase 1, agreement with CLECs on OSS interfaces, enhancements, business requirements, and a change management process, including a 12-month forward-looking view of process changes and deployment schedule. In the event Joint Applicants and the CLECs are unable to reach a written agreement within 2 months, any issues in dispute would be resolved through arbitration by an independent third party arbitrator in consultation with subject matter experts from Telecordia Technologies, with the expenses of the arbitration to be shared by Joint Applicants and the CLECs that are parties to the disputed issues.

Phase 3: Within the sooner of 18 months after the completion of Phase 2 or 24 months after the merger closing, Joint Applicants would develop and deploy, on a phased-in basis, system interfaces, enhancements, and business requirements consistent with the agreement reached in Phase 2. Any dispute between Joint Applicants and a CLEC over whether or not Joint Applicants have implemented the agreement reached in Phase 2 would be resolved through arbitration by an independent third party arbitrator in consultation with subject matter experts from Telecordia Technologies, with the expenses of the arbitration to be shared by Joint Applicants and the CLEC(s) that are parties to the disputed issues.

Graphical User Interfaces

Joint Applicants would deploy, within 2 years after the merger closing, graphical user interfaces (*e.g.*, SBC's Toolbar interface) for OSS that support pre-ordering, ordering, provisioning, maintenance and repair, and billing for resold services, individual UNEs, and combinations of UNEs. Such interfaces would use industry standards as appropriate and will meet the requirements of 47 U.S.C. § 251(c)(3). Deployment of graphical user interfaces would be carried out on the same three-phase schedule as application-to-application interfaces.

Direct Access to Service Order Processing Systems

Joint Applicants would offer -- *in addition to the application-to-application and graphical user interfaces described herein* -- to develop and deploy direct access to SBC's SORD or Ameritech's SOAC service order processing systems for resold services, individual UNEs, and

combinations of UNEs, provided that a CLEC requesting such direct access enters into a contract to pay Joint Applicants for the costs of development and deployment. The access developed would meet the requirements of 47 U.S.C. § 251(c)(3). Joint Applicants' offer to develop direct access to SORD or SOAC would be available for a period of 30 months after the merger closing, and Joint Applicants will agree to develop and deploy the interface contracted for within one year of a completed contract with the CLEC.

Additional OSS Commitments

To the extent that OSS issues in addition to those identified above are raised in any collaborative process, Joint Applicants would make such issues part of the appropriate collaborative processes.

> **a)** ***On p. 17 of Exhibit 6, the Applicants state their willingness "to commit to the following timetables and milestones regarding integration of OSS processes in Illinois." In the very next line of the document, Applicants state that "there is no single timetable for integration of Ameritech's and SBC's OSS" and that systems will be considered on a case-by-case basis. What specific commitment are the Applicants making here? Do the Phase 1, 2 and 3 commitments cover all (100%) OSS of both SBC and Ameritech which the Applicants currently deploy or plan to deploy? Or, do these OSS commitments only cover certain aspects of Applicants' OSS? What aspects of Ameritech Illinois' OSS do the Applicants envisage will be covered by this 3 phase process?***

Joint Applicants explain that they are committing to a three-phase approach to defining and implementing enhancements to existing Ameritech OSS and/or deploying existing SBC OSS in Illinois. First, Joint Applicants would develop a "plan of record," a phase that took several months after the SBC/PacTel merger. Second, Joint Applicants would participate in a collaborative process with CLECs on OSS issues. Joint Applicants note that this is a process that is not within their control and is dependent upon the cooperation of CLECs and assistance of the Staff. Joint Applicants state that this process took several months in Texas. The last phase is the develop and deploy stage, which is also an involved process. The overarching timetable for this three-phase approach is 24 months (assuming that the collaborative process is completed within the timeframe proposed by Joint Applicants). However, this commitment is based on an individual evaluation of each of the functional areas of Ameritech Illinois' OSS, *i.e.*, pre-ordering, ordering/provisioning, maintenance/repair and billing and as such it is Joint Applicants' expectation that enhancements or integration of systems will vary both by functional area and degree as well as by interface type, *i.e.*, GUI vs. application-to-application interface.

Joint Applicants state that they will not wait two years to engage in a flash cut to any OSS enhancements. Improvements, whether or not developed by the processes described above, will be integrated over time on a schedule that will allow Joint Applicants and CLECs to absorb them. Joint Applicants contend that neither side would benefit from a flash cut approach.

Joint Applicants further explain that Phases 1, 2 and 3 would cover all OSS functions. To the extent that the functions are dependent on back-office system

capabilities, those systems would be included. However, Joint Applicants believe it is important to note that, given the implementation window involved, not all potential integration of systems can be included. Joint Applicants state that legacy systems cannot be integrated or changed out overnight; 24 months after the SBC/Pacific Telesis merger, integration and consolidation efforts are well underway, but are still not complete. SBC would continue to enhance and evolve its systems capabilities for retail and wholesale operations alike, across all operating territories, including Illinois, if this merger is approved. After the 24 month implementation window, any subsequent improvements would be communicated and introduced to all affected CLECs following guidelines developed for change management.

b) ***Will the interfaces employed by the Applicants comply with the latest industry standards/guidelines developed under the auspices of the Alliance for Telecommunications Industry Solutions ("ATIS")?***

Joint Applicants stated that they are strong proponents of using industry standards or industry guidelines where available. To the extent that using the latest standard/guideline does not result in any loss of functionality, Joint Applicants expect that their proposed plan of record would take into account both the latest version available for implementation as well any known timeframes for release of the next version of guidelines/standards.

c) ***What are the specific enforcement mechanisms which would be used by the Commission in the event of non-compliance with the commitments made by the Applicants? Should the Commission engage in third party or carrier-to-carrier testing of OSS to ensure compliance by the Applicants? If so, who should the Commission engage to perform such (third-party or carrier-to-carrier) testing? If there should not be third-party or carrier-to-carrier testing, why not?***

With regard to enforcement mechanisms, Joint Applicants referred to their answers on this topic in response to other questions. In particular, these commitments will be covered by the Commission's residual enforcement mechanisms, both to the extent that they fall within the ambit of Section 13-515 of the Illinois PUA and to the extent the Commission orders a potential allocation of savings to reflect non-compliance with certain conditions as set forth in the Post Exceptions Proposed Order.

In Joint Applicants' view, neither third-party nor carrier-to-carrier testing is required to ensure compliance. Joint Applicants contend that the best measure of their compliance is carrier-to-carrier testing and, ultimately, the actual use of the enhanced OSS by CLEC customers. (Viveros SDR, SBC/Am. Ex. 7.2 at 4.) They also point out that even the carriers that insist on third-party testing do not agree on how or when it would be conducted and completed. Joint Applicants do, however, support carrier-to-

carrier testing and encourage CLECs to actively participate in the development process, which will necessarily include testing. As Mr. Viveros stated in his Rebuttal Testimony on Reopening, "if CLECs are willing to develop *and test* during [Phase 3 of the OSS collaborative process] and the Commission remains involved to quickly address unresolved issues or disagreements, not only is third party testing unnecessary but the result would be inferior to the results from SBC's proposal." (SBC/Am. Ex. 7.3 at 7) (emphasis added.)

Should any CLEC feel that SBC/Ameritech has not implemented what was agreed to, the commitment already includes an adequate enforcement mechanism, *i.e.*, arbitration, to resolve the dispute. Joint Applicants also note that Telecordia is performing third-party testing in Texas with the agreement of the Texas PUC, and that such testing could have beneficial findings for Illinois. Joint Applicants further state that it cannot be overemphasized that they have every incentive to provide appropriate OSS functionality which is critical to a successful 271 application, and that in this process there are factors not within the total control of Joint Applicants.

Staff's Position

Staff believes the Joint Applicants were generally responsive to the Commission's questions regarding OSS. As Staff indicated in its Direct Testimony on the Re-Opening, the OSS proposal has the potential to provide CLECs with parity service eventually since it allows for Commission oversight of the collaborative process.

Staff was concerned with certain aspects of the dispute resolution mechanisms proposed by the Joint Applicants. Under their proposal, any disputes that arose during Phase 2 and Phase 3 of the collaborative process would be addressed through an independent third party arbitrator with expenses being shared equally by the Joint Applicants and the CLECs.

Staff raised the concern that arbitration costs might deter smaller CLECs from raising important issues during the collaborative process that might lead to a dispute. As a result, Staff recommended that the Commission serve as a final arbiter to any disputes arising under the collaborative process. Staff reasoned that the Commission, as opposed to an independent third party neutral, was the entity best able to resolve both policy and technical matters impacting telecommunications operations in Illinois. More importantly, Staff pointed out that with the Commission as final arbiter, any associated arbitration expenses would be kept at a minimum for all involved parties.

Staff also does not believe that independent third party testing is necessary in this instance to ensure that Joint Applicants OSS is fully functional. Staff's underlying reasoning is twofold. First, the fact that the Commission itself would serve as arbitrator of disputes during the OSS collaborative process obviates the need for third party testing. As an active participant in the process, the Commission would be fully

informed of all disputed issues while it timely resolves all such issues as they arise. Second, there is a danger in waiting until the end of the two year process to institute a third party review since such a delay may easily result in a backlog of unresolved issues.

Staff acknowledges that its OSS testing recommendation in this docket differs from the one made in another telecommunications merger case involving GTE and Bell Atlantic (Docket 98-0866). As Staff explained on re-direct during the evidentiary hearing, there is a perfectly reasonable explanation for the different recommendations. Tr. 2615-2616. Although Staff did initially recommend the utilization of third party review in the GTE/Bell Atlantic proceeding, that recommendation was based on the fact that GTE supplied Staff with inadequate information regarding the status of its OSS. In the sur-rebuttal phase of that proceeding, however, the carriers countered with an alternative proposal which is very similar to the one the Joint Applicants have made in this proceeding (ie. providing for specific benchmark, penalties, timelines). Subsequently, Staff revised its position regarding the necessity of third party review.

AT&T's Position

AT&T contends that what Joint Applicants have provided in response to the Commission's request for specific and detailed information are vague and indefinite promises about OSS. Consequently, AT&T asserts that the Commission still has no idea what system changes and OSS enhancements Joint Applicants will actually make, much less even propose to make, in Illinois. Joint Applicants offer only future promises to discuss and negotiate with CLECs on these issues five to six months after the merger closes.

The cross-examination of Mr. Viveros, SBC's OSS witness, AT&T points out only served to highlight the vagueness of Joint Applicant's OSS "commitment." Mr. Viveros conceded that Joint Applicant's FCC commitment to deploy "uniform" application-to-application and graphical user interfaces subsumed their Illinois OSS commitments. Tr. (Viveros), 2171. Moreover, when asked whether Joint Applicant's commitment to deploy "uniform" application-to-application interfaces meant that the same interfaces would be deployed throughout SBC/Ameritech's region, Mr. Viveros coyly answered "not necessarily." Tr. 2157. Similarly, when asked whether that meant that SBC/Ameritech would deploy the same version of a particular interface and whether the commitment to implement "uniform" business rules would be the same throughout the 13-state region, Mr. Viveros carefully hedged his answers, twice repeating "not necessarily." Tr. 2158-58.

AT&T opined that what the Commission should take from these non-answers is that Joint Applicant's OSS commitments do "not necessarily" amount to anything. Mr. Viveros' non-committal answers give Joint Applicants unfettered "wiggle" room for the future in defining what they have, or have not, committed to in relation to developing and deploying new OSS interfaces in Illinois. Indeed, AT&T noted that there is nothing

on the record to indicate that Joint Applicants have committed to changing the status quo in any way in regard to Ameritech's OSS systems.

Although, the Joint Applicants attempt to blame the vagueness of their OSS commitments on their alleged inability to conduct post-merger planning (SBC/Ameritech Ex. 7.2 (Viveros DOR), at 2), the Commission, AT&T contends, should lend little credence to this self-imposed excuse. Indeed, AT&T pointed out that the record established that while SBC/Ameritech were negotiating their OSS commitments at the FCC – and before their testimony was filed in the Illinois re-opening case – not less than three meetings have taken place between SBC and Ameritech personnel regarding Ameritech's OSS systems. Cross Ex. B; Tr. 2165-2168. SBC's OSS witness Mr. Viveros was present at those meetings and admitted that he used them to attain "a much better understanding of what systems Ameritech currently offers its CLEC customers." Tr. 2167-68.

AT&T contends that not only are Joint Applicant's OSS promises vague, but they are illusory. They are based on the wholly unrealistic presumption that in just two months (one month under the Proposed FCC Conditions) SBC/Ameritech can come to an amicable agreement with Illinois CLECs regarding a complete revamp of Ameritech's OSS interfaces and corresponding business rules. AT&T explained that any dispute between Ameritech and the CLECs automatically triggers (under their proposal) an open-ended arbitration process that would indefinitely delay all of Joint Applicant's commitments to deploy even those systems or rules that CLECs and Joint Applicants may have agreed on in the collaborative.

AT&T contends that Joint Applicant's schedule for developing and deploying OSS changes is too long and subject to the likelihood of substantial delays which could preclude them from ever being achieved. The two-year time – including the 18 month deployment and development Phase III – is itself is too long. AT&T notes that in Ohio Joint Applicants have committed to implement all OSS improvements resulting from the merger within six months of merger closing. Ohio Stipulation and Recommendation, Section IV.A.3. Joint Applicants have given no excuse why it should take them so long to implement such OSS improvements in Illinois.

Moreover, AT&T pointed out that the already elongated two-year period is applicable if and only if all of the CLECs participating in either the FCC or ICC collaborative workshops fully acquiesce within one or two months in all aspects of whatever implementation plans proposed by Joint Applicants. If all CLECs do not so acquiesce, AT&T explained that the plan is subject to arbitration that is unlimited in duration and virtually certain to delay substantially the deployment of the application-to-application interfaces. Obviously, SBC has a strong incentive, and absolute unilateral ability, to take a "take it or arbitrate it" position and thereby force these federal and state collaboratives to submission or the delays of arbitration.

AT&T contends that the schedule is as grossly unfair to CLECs as it is unrealistic. AT&T explained that In Phase I, Joint Applicants are given five months to develop a proposal for deploying application-to-application OSS interfaces, while CLECs, on the other hand, are allowed only 2 months in the Illinois Phase II to review all the details of Joint Applicants proposals in regard to: (1) changes in OSS interfaces (2) business rules regarding those interfaces (3) a change management process regarding those interfaces and (4) the schedule for deployment of those interfaces and business rules. AT&T opined that two months is far too short for meaningful CLEC analysis of Joint Applicant's proposed plans, much less for CLECs and Joint Applicants to discuss potential solutions to open issues that might arise in those collaboratives. AT&T also pointed out that Illinois CLECs have engaged in negotiations pertaining to the implementation of EDI version 7.0 for more than a year with Ameritech, and have been discussing the implementation of EDI 10.0 since November of 1998. ~~Moroever~~Moreover, AT&T noted that Joint Applicants admit that "[t]he collaborative process in Texas lasted approximately nine months." SBC/Ameritech Ex. 10.0 (Dysart DOR), at 6. In California, the collaborative process took approximately seven months to come to a conclusion. Tr. (Viveros), at 2178-79. And neither of those collaboratives concerned wholesale changes in the underlying BOC's OSS interfaces and business rules.

AT&T pointed out that the consequence of not accepting Joint Applicants' proposed plan in full within two months, on the other hand, is a delay in the deployment of OSS interfaces and business rules through an arbitration process which is unbounded in duration. The indefinite nature of this process could easily extend for many months or even (with possible appeals) years – well past the 3-year sunset date on which the Proposed FCC Conditions cease to be effective and binding on Joint Applicants.

AT&T noted that while Joint Applicant's readily agree that their Illinois OSS commitments are subsumed within the FCC OSS commitment to implement "uniform" interfaces and business rules (Tr. (Viveros), 2172), and that the FCC and Illinois OSS collaboratives will address identical issues during similar timeframes, Joint Applicants offer no explanation regarding how these two commitments, or how these overlapping collaboratives, would possibly function. AT&T pointed out that Joint Applicants fail to explain what would happen if the FCC collaborative and the Illinois collaborative – or, more likely, the arbitration decisions resulting therefrom – result in differing conclusions. While Joint Applicants admit that there is a "potential" for inconsistent results, Joint Applicants offer vague and unenforceable suggestions of a "coming together" of regulatory entities to "agree on some sort of single adhesive process, rather than manage these processes independent of one another." Tr. (Viveros), 2184-85. Joint Applicants fail to explain how this unprecedented convergence would take place.

AT&T pointed out that the FCC and the ICC are not the only entities that affect Joint Applicant's OSS commitment. When totaled, there are no less than eight

collaboratives taking place all in or around the same time: (1) Three collaboratives at the FCC dealing with "uniform" interfaces, business rules, and access to xDSL systems; (2) Three collaboratives in Illinois, one dealing with interfaces and business rules, another dealing with performance measures and liquidated damages; and a third with interconnection; (3) And two collaboratives in Ohio, one dealing with OSS interface changes and the other dealing with performance measures and remedies. AT&T explained that since all these collaboratives take place concurrently and deal with the same issues, it would be difficult enough for entities the size of AT&T, MCIW and Sprint to be able to staff and juggle them effectively; certainly smaller Illinois CLECs will have even less ability to do so. And the state commissions and FCC have similar staffing and financial constraints. AT&T contended that these overlapping collaboratives raise the likelihood of a "collaborative train wreck" which would make an open-ended arbitration all the more likely.

AT&T contends that Joint Applicants' all-purpose answer to OSS issues is to place them in collaborative processes, but it is clear that that is simply a device to avoid having to commit to any substantive plan for OSS harmonization and improvement while getting this merger approved. And given the overall three-year time frame in which OSS "commitments" will be in effect, there is a strong potential that they will never come about in the first instance. AT&T urges the Commission looks behind all the paper promises of future proposals and processes, where it will find no OSS improvements are specified at all, much less improvements that are enforceable or that a CLEC could use to develop a business plan for market entry.

Sprint's Position

~~Sprint proposes five charges to implement uniform OSS.~~ Sprint argues that the proposed OSS conditions suffer from serious and numerous flaws at the federal level and in Illinois. Sprint points out the numerous differences between the FCC plan and the Illinois plan. for example, the FCC plan has a different dispute resolution process than the Illinois plan. Contrary to the Illinois plan, the FCC plan has self-executing penalties. Moreover, there are 3 additional collaborative processes planned at the federal level that are not part of the Illinois commitments: 1) a process to discuss CLEC local service requests; 2) a process to implement uniform change management; and a process to improve loop pre-qualification and qualification for the ordering of xDSL services.

Joint Applicants attempt to smooth over any possible differences between the Illinois plan and the federal plans by assuring the Commission that there is a large amount of overlap between the two plans and that any possible differences can be worked out by the relevant regulatory authorities. Joint Applicants' multiple OSS plans, however, raise more questions than answers. How, for example, will Illinois CLECs obtain hurdle reducing benefits of changes to OSS related to providing information for advanced services? What CLEC has the technical and financial resources to meaningfully participate in this myriad of collaborative processes?

Sprint supports third party testing of Joint Applicants' OSS commitments. "Third

party testing is necessary to ensure that OSS systems work properly and at that parity is achieved." Sprint generally supports the plan for third party testing found in AT&T witness Turner's testimony.

Sprint argues that the 24-month period for integrating OSS systems is far too long. Moreover, that timeframe is very fluid as detailed in Joint Applicants' filing. Arbitration of issues in phase 2 could delay the implementation process for months or years.

As Sprint has exhaustively demonstrated in this proceeding, SBC's and Ameritech's incentive to prevent or degrade (e.g., through delay) CLEC access to essential inputs such as OSS would be greatly increased by the merger. Short of prohibiting the merger, the next best way to blunt SBC/Ameritech's inefficient incentives is to make completion of appropriate OSS upgrades a condition precedent to the merger closing. This would give SBC/Ameritech the incentive to cooperate that is essential for successful OSS upgrades. ~~Sprint argues that the 24-month period for integrating OSS systems is far too long. Sprint also contends that third-party OSS testing is necessary to ensure that the OSS systems work properly and that parity is achieved in accordance with Mr. Turner's testing proposals.~~

Sprint proposed that there be appropriate OSS upgrades: To lower the hurdles for CLEC competitors providing advanced services, Sprint proposed various conditions to ensure that the merged company provides CLECs with parity service for the provision of advanced services. These include access to loop qualification data on an individual loop basis and on a market-wide basis. Market-wide information about advanced services compatibility will permit CLEC to deploy their resources strategically. ~~Also, for advanced services OSS, requesting carriers should have daily access to a loop inventory database.~~

MCIW's Position

MCIW argues that the Commission should require Ameritech Illinois to implement uniform GUI and uniform application-to-application industry-standard interfaces in Illinois prior to consummating the merger.

MCIW also contends that implementation of working OSS is extremely complex, and therefore that third-party testing is essential. MCIW specifically recommends that the Commission require the consulting firm KPMG, which is performing third-party testing of OSS systems in New York, Pennsylvania, and Georgia, be retained to conduct third-party testing in Illinois. In addition, MCIW asserts that third-party testing alone is not sufficient, and that carrier-to-carrier testing also should be required.

Joint Applicants' Response

In response to Staff's concerns that Phases 1-3 of the OSS commitment be completed within 24 months, Joint Applicants committed to meet that deadline. Regarding Staff's concern that the Commission arbitrate OSS disputes arising from the collaborative process, Joint Applicants explain that they are not opposed to the Commission's involvement, but offered the option of an independent arbitrator in order to give the Commission flexibility. More importantly, however, Joint Applicants state that OSS issues will have to be resolved on a region-wide basis. Thus, state-specific arbitrations could be counterproductive and cause conflicts. They therefore suggest that the Commission consider working with other regulatory entities to agree on a single cohesive process for resolving any disputes that might arise during the OSS integration and enhancement process.

As for AT&T's request that Joint Applicants immediately adopt SBC's Texas OSS in Illinois because Joint Applicants purportedly plan to do so eventually anyway, Mr. Viveros explained that AT&T's request is not (and is contrary to) what he proposed. Rather, Joint Applicants propose to evaluate both companies' systems for similarities and differences and to evaluate the feasibility of certain changes, as well as the benefits that would accrue to *all* CLECs, not just AT&T, of using or enhancing existing systems. When that evaluation is complete, Joint Applicants will work with Staff and CLECs to create a plan that benefits all parties. Mr. Viveros explained that AT&T's concern about knowing "whose" system to build to may be legitimate in the abstract, but that once Joint Applicants have committed to use industry-standard interfaces (as they have), the CLEC does not need to know whether it will be SBC's or Ameritech's interface that is being used.

Turning to Sprint's claim that the OSS timetable is too long, Joint Applicants explain that to create a system that builds off of the experience and capabilities of both companies, and to do it correctly, takes time. Joint Applicants added that they will not perform a "flash-cut" of all OSS improvements at the end of the 24-month deadline. Rather, improvements will be implemented on a rolling basis, allowing both Joint Applicants and CLECs to absorb them over time.

Regarding the desire of several parties for third-party testing, Joint Applicants first note that Staff witness McClerren has agreed that such testing is not necessary. Indeed, Mr. McClerren acknowledged that Ameritech Illinois' existing OSS interfaces for resale services and UNEs (primarily unbundled loops) are already being used by CLECs to a significant extent (Tr. 2614-2615). In addition, Joint Applicants argue that since the parties will be jointly developing either new interfaces or enhancements to existing interfaces, part of the development effort will include internal testing and joint testing with CLECs. Also, they note that the FCC has recognized that third-party testing is no substitute for actual CLEC usage and that direct testing and development with CLECs will provide the most benefits to everyone; indeed, if that occurs, third-party

testing would be not only unnecessary, but inferior to the results of Joint Applicants' proposal.

Commission Analysis and Conclusion

~~We believe that Joint Applicants have been responsive to our questions. We also find that Joint Applicants' proposed OSS commitment satisfies our concerns and is acceptable in its present form. In particular, we conclude that the OSS commitments will bring a procompetitive benefit to CLECs and end-users in Illinois that would not exist absent the merger.~~

~~With regard to the specific timetable for integrating Joint Applicants' OSS systems, Joint Applicants' 3-phase proposal strikes us as a reasonable approach to what will certainly be a complex and expensive process. While some parties may disagree with the degree of complexity, the integration of OSS systems is really an internal decision driven by the parties most knowledgeable about the respective systems. The main purpose of our question was to obtain some firmer idea of what the plans were for integration and to ensure that the integration process would not have an adverse impact on competition in Illinois. We are satisfied that Joint Applicants' proposal will not adversely affect competition in Illinois and is subject to appropriate enforcement mechanisms.~~

~~With regard to third-party testing, we agree with Staff witness McClerren that there is no need to appoint a specific entity to perform such testing as part of this case. Beyond that, we also agree with Joint Applicants that no such testing needs to be mandated at this time. Joint Applicants' commitment includes a collaborative process open to all CLECs. We would expect that process to lead to agreement on most or all issues and to include both internal and CLEC testing of the OSS systems. We also note that, while we are willing to serve as arbitrator of disputes arising from the OSS collaborative process (as Staff suggests we should) and will do so if asked, we would prefer to work with regulatory bodies in other states to devise some consolidated process for such disputes covering all states, which would lead to greater uniformity and perhaps faster implementation.~~

~~Thus, the Commission finds the Joint Applicants' OSS proposal allows for Staff involvement in the collaborative process as well as very detailed benchmarks which will enable the Commission to closely monitor the Joint Applicants' OSS performance. In the event the Joint Applicants' OSS fail to meet their OSS commitments, they will incur penalties up to $90 million annually. This combination of CLEC collaboration, Commission oversight, and strict penalty enforcement reduces the need for independent third party review.~~

The Commission finds that the multiple, conflicting collaborative processes will raise entry hurdles for competitor, not lower them. Moreover, nothing is proposed in Illinois to ensure that OSS processes for advanced services are available to CLECs at parity to Ameritech Illinois. Joint Applicants also must complete their OSS

improvements pre-merger approval. The Commission finds that independent third party testing of Joint Applicants' OSS is necessary to be completed to ensure parity treatment for CLECs.

~~Finally, u~~Under Illinois law, the Commission is legally restricted from awarding state contracts for professional services absent a competitive bidding process. *See* 30

ILCS 500/35-30 (West's Supp. 1998). As a result, any third party testing would be subjected to a competitive bidding process.

For these reasons, the Commission adopts the following language:

SBC-Ameritech must demonstrate that each of its ILECs provides uniform OSS interfaces for carriers purchasing interconnection. Such interfaces must be uniform throughout the joint SBC/Ameritech region and must include, where applicable, all industry standards (including OBF guidelines), both GUI and EDI based interfaces where no industry standard applies, and uniformity among all related formats, including data fields and business rules.

Each of the ILECs must demonstrate through an independent, third-party test that its OSS interfaces are capable of handling the reasonably expected demands for pre-ordering, ordering, provisioning, billing, repair and maintenance with respect to resold services, unbundled network elements, and combinations of unbundled elements. The testing shall follow the New York PSC independent testing format, as set forth in Case 97-C-0271. Prior to closing, the parties shall submit for the Commission's approval the model contract(s) providing for such testing in accordance with this condition."

The Commission recognizes that that the changes necessary to implement uniform OSS, while very much needed, impose significant costs upon CLECs. In light of these costs, the Commission imposes the following additional obligations:

- Current interface versions should be maintained for at least one to two years after all merger considerations have been satisfied.
- SBC must clearly identify all external CLEC business rule impacts to fully disclose to CLECs any potential gaps.
- SBC must outline all categories of products/services order activities, line activities, account activities, pre-order activities, documentation handbooks, and connectivity requirements that will be uniform for all business rules.
- Because the phased implementation approach leads to an unstable environment unless code is restricted, CLECs must have additional assurances in this area. CLECs are at risk of SBC continually imposing or issuing additional requirements from enhancements or dot releases. Therefore, the latest code must be made available for an interim period of time in order to protect current customers.
- SBC should include a statement on specific testing arrangements and criteria established for each testing stage. A merger of a system on paper is not the reality until extensive testing is conducted. CLECs should not have to migrate to any release until thorough testing has been completed and successfully documented.
-

Proposed Language for Advanced Services OSS:

Each ILEC (defined as the operating companies of the merging companies) shall make available to requesting carriers electronic access on a daily basis to a Loop Inventory Database as provided herein. The Loop Inventory Database shall be the exclusive repository of such information within the ILEC (or any affiliate of the ILEC) and any affiliate or division of the ILEC desiring to have access to such information

shall access such information exclusively through the database, on the same terms and conditions as requesting CLECs. Two weeks prior to closing, each ILEC shall demonstrate to the Commission that it has established the Loop Inventory Database, and that it contains all relevant data (as set forth below) in the ILEC's possession (including in the possession of any affiliate of the ILEC), provided that the data contained in the Database shall reflect the inventory of loops connected to central offices serving not less than 50% of that ILEC's exchange access lines. No later than six months after the closing, the database shall reflect an inventory of loops connected to all of the remaining central offices. The database shall permit the real-time retrieval of both location specific loop capability information and aggregate market information. Location specific loop capability shall include: actual loop length (as measured from customer premise to serving central office); the presence of load coils, bridged taps, and repeaters (and how many of each); the presence of any other known interferers; whether the location currently is served by facilities that transit through a digital loop carrier (DLC); the availability of alternate facilities that could circumvent the DLC, i.e., end-to-end copper loop; and any known binder group restrictions that would hinder the placement of a particular xDSL technology. Aggregate market information shall include: average loop length of all loops connected to a specific central office; the percentage of loops that are less than 6,000, 12,000 and 18,000 feet; the percentage of loops currently residing behind a DLC; and the percentage of loops that contain interferers such as load coils, bridged taps, and repeaters.

OPERATIONS SUPPORT SERVICES: DEPLOYMENT OF INTERFACES

5. ***A timeframe for the Commission to expect deployment of either application-to-application OSS interfaces which support pre-ordering; ordering; provisioning; maintenance, repair, and billing of resold services; unbundled network elements and combinations thereof, which would include support of graphical user interfaces. Alternatively, when Ameritech Illinois would offer CLECs direct access to its service order processing systems.***

Joint Applicants' Position

Joint Applicants state that this question has been answered in response to issue number 4 above. They add that Ameritech Illinois already provides CLECs with direct electronic access to its service order processing systems and has deployed a full range of application-to-application and GUI interfaces.

Commission Analysis and Conclusion

We agree that this question is covered by question 4 and incorporate our analysis and conclusion on that question here.

UNBUNDLED LOCAL SWITCHING

6. *Provision of local switching in a commercially feasible manner, including customized routing of operator services and directory assistance.*

Joint Applicants' Position

Ameritech Illinois states that it is already in full compliance with any requirements to provide local switching in a commercially feasible manner, including customized routing of operator services and directory assistance.

As a threshold matter, Joint Applicants note that the United States Supreme Court vacated the FCC's rule which had required ILECs to provide unbundled local switching ("ULS"). *AT&T Corp. v. Iowa Utils. Bd.*, 119 S. Ct. 721, 734-36 (1999). Therefore, Ameritech Illinois states that it currently has no legal obligation to provide ULS as an unbundled network element.

However, Ameritech Illinois also acknowledges that it is a party to numerous interconnection agreements with various CLECs, which contain the terms and conditions by which Ameritech Illinois will provide ULS on both an end office and tandem switch basis. This Commission has approved these agreements, and they are on file with the Commission's Clerk. Ameritech has committed in its "status quo" letter (Amended Joint Petition, Attachment 6.1) to continue to provide ULS, pursuant to those agreements, at least until the FCC enters its order in its pending UNE Remand Proceeding.

Ameritech Illinois states that the ordering procedures for ULS products are described in the Ameritech Illinois product guides. The ULS product guides list the standard due dates and service intervals associated with these products. Ameritech Illinois explains that these intervals are comparable to intervals established for other network elements in Ameritech Illinois' approved interconnection agreements, and the intervals Ameritech Illinois provides for bundled services of comparable complexity.

Staff's Position

Staff testified that the Joint Applicants' answer is responsive to the Chairman's inquiry. (Gasparin Direct, Staff Ex. 5.02 at 4). Staff also testified that with the provisioning of shared transport it anticipates that CLECs will begin ordering unbundled switching. (Id.).

Commission Analysis and Conclusion

We agree with Staff that Joint Applicants have been responsive to our question. We also find that Joint Applicants' explanation of Ameritech Illinois' ULS product, including customized routing of operator services and directory assistance, is adequate, and conclude that there is no need for any condition on our approval of the

merger with respect to ULS.

UNBUNDLING AND WHOLESALE SERVICES

7. *Provision of telecommunications services on a wholesale level, including but not limited to providing the unbundled network platform without operator services and directory assistance; customized routing of all categories of traffic; volume discounts; competitive classifications of services in the ICC number 19, part 22, tariff; appropriate charges to be applied when a customer converts to a reseller on an "as is" basis; branding of resold OS/DA services; 911 services; and access to Advanced Intelligent Network triggers.*

Joint Applicants contend that the vast majority of the issues listed in this question have already been the subject of an investigation in Docket 97-0553, a pending proceeding initiated by the Commission to address issues relative to Ameritech Illinois' noncompetitive wholesale tariffs. The parties there are waiting for the issuance of the Hearing Examiner's Proposed Order. The issues include: (1) unbundled operator and directory assistance services; (2) volume discounts; (3) the appropriate charges to be applied when a customer converts to a reseller on an "as is" basis; (4) the branding of operator and directory assistance services; (5) 911 services; and (6) access to AIN triggers. Joint Applicants state that a full record was developed in that proceeding and briefing was completed in August of 1998. Ameritech Illinois further contends that it has resolved the technical problems associated with the selective routing and unbundling of OS/DA traffic and filed a tariff offering this service on May 1, 1998 which became effective on June 16, 1998. Ameritech Illinois also stated that with respect to AIN triggers, Staff held workshops in Docket 97-0553; based upon the information developed in those workshops, Staff concluded that no further action was necessary in that docket and that monitoring of technological developments and industry forums should be pursued instead.

Joint Applicants state that the competitive classification of certain Ameritech Illinois' wholesale services was the subject of an investigation in a companion proceeding initiated by the Commission at the same time as Docket 97-0553. Subsequently, Ameritech Illinois reclassified all competitive wholesale services to noncompetitive status. By agreement of the parties, this action rendered the proceeding moot.

Joint Applicants state that they are uncertain what the Commissioners intended by the phrase "customized routing of all categories of traffic." In Joint Applicants' experience, this phrase is used in relation to the selective routing of operator and directory service traffic as a resale option. This issue was addressed in Docket 97-0553. Joint Applicants are not aware of any pending requests by CLECs reselling services in Illinois for selective routing of any other categories of wholesale traffic.

Staff's Position

Staff witness Graves agreed with the Joint Applicants that the unbundling issues identified in the Commission's question have been addressed in other proceedings and listed the issues in Staff Ex. 4.02, at. 15. Mr. Graves also noted that the parties had determined that insufficient information existed at the time of the filing of the testimony to address the appropriateness of Ameritech Illinois' failure to offer mediated or unmediated access to AIN triggers. (Id.).

Mr. Graves further testified that Staff had identified problems with Ameritech Illinois' method of unbundling and rebranding of OS/DA services, and Ameritech Illinois' unilateral imposition of excessive restrictions on the aggregation of services. In order to provide the Commission with a complete understanding of these issues, Staff witness Graves attached Staff's Initial and Reply Brief from Docket 97-0553 as Attachments 5 and 6, respectively, to Staff Ex. 4.02

Staff witness Gasparin testified that Staff had held workshops regarding access to AIN triggers and will continue to monitor the national and industry forums which will set the standards for interconnection to the incumbents network. (Staff Ex. 5.02 at 4). A major concern of Staff regarding access to the triggers is the security to the incumbents network and protection of proprietary data of the other competitive providers who may supply AIN services. Staff is supportive of allowing competitors to provision AIN type services on a fully competitive basis which would allow for future access to these triggers once the security and protection criteria are established. Mr. Gasparin testified that Staff would continue to monitor the progress of the national and industry forums to assure that the goals of this Commission are met. (Id.).

Intervenors' Position

MCIW witness Lichtenberg testified regarding its desire for the UNE Platform. MCIW argues that the UNE Platform is essential to the ability of CLECs to provide competitive local exchange services to residential and small business customers on a mass market basis for the foreseeable future. According to Ms. Lichtenberg, MCIW's experience shows that self-provisioning of facilities or use of individual UNEs does not allow for mass-market service to such customers at this time. MCIW also asserts that an important part of providing the UNE Platform is certainty in pricing, including associated non-recurring charges. In addition, MCIW believes the Commission should prohibit any "glue charge" for Ameritech Illinois' combining UNEs that are already combined in its network.

MCIW asserts that the UNE Platform is not available in Illinois today and that the Joint Applicants have ignored the Commission's questions regarding the UNE Platform. Consequently, MCIW recommends that the Commission require Joint Applicants to provide the UNE Platform without restrictions, and also require Ameritech Illinois to begin transitioning resale customers to the UNE Platform and allowing CLEC

customers to be served through the UNE Platform *prior* to consummation of the merger. MCIW believes this should occur without disconnection of the customer's existing service, and therefore without a charge.

Sprint proposes that SBC provide unrestricted availability of combinations of such UNEs, including shared transport and the UNE-Platform or UNE-P without any non-cost-based non-recurring charges, sunset period (other than as stated herein), 'glue' charge, or geographic restrictions, consistent with 47 C.F.R. §51.315, AT&T Corp. v. Iowa Utilities Board and other applicable law. As used herein, the UNE-Platform or UNE-P means access to the combination of UNEs necessary to provide a telecommunications services at the total element long-run economic cost (TELRIC) of such UNEs.

Also, in any central office where the ILEC (or any of its regulated or unregulated affiliates) has begun to offer xDSL services, then for all loops served by that central office, the ILEC shall make available the xDSL network elements (including all DSL functionalities such as DSLAMs) on a combined basis as a UNE-Platform. This obligation is in addition to and independent of the obligation of the ILEC to make

individual UNEs available or its obligation to make its xDSL retail services available at a wholesale discount.

MGC and ACI made similar proposals:

- They contended that as conditions of the merger, the Joint Applicants should be required to work with Commission staff and CLECs to develop an xDSL-capable loop offering within the next 45 days that is not length or technology restrictive and is available to all CLECs.

- The Joint Applicants should immediately make available on a preordering basis data regarding loop characteristics and makeup.

- The Joint Applicants should be prohibited from providing their xDSL services to customers in any central office where a data CLEC can demonstrate to the Commission that it is routinely unable to provision 90% or more of the loops ordered for the provisioning of advanced services.

Joint Applicants' Response

With regard to the UNE Platform issue, Joint Applicants explain that Ameritech Illinois will provide CLECs with pre-existing combinations of UNEs in its network, including the shared transport/local switching combination. They also state that this commitment is, of course, subject to the outcome of the UNE Remand Proceeding at the FCC and to each of the desired elements of a pre-existing combination being required by law. As for pricing of such combinations of UNEs, Joint Applicants state that there will be no "glue charge" for "combining" UNEs that are already combined in Ameritech Illinois' network, but that there will be a cost-based charge for ongoing network administration and maintenance of that existing combination. Joint Applicants also note that they have committed to the FCC to make the UNE platform available to residential customers, subject to certain conditions, as part of the proposed FCC conditions package. If the FCC approves the merger subject to those conditions, the conditions would apply in Illinois. Joint Applicants have not committed to provide the UNE platform for business customers either in this proceeding or as part of the FCC conditions package agreed to by the FCC staff, because vigorous competition for those customers already exists, both in Illinois and elsewhere.

Commission Analysis and Conclusion

~~We agree with Staff that Joint Applicants have been responsive to our question. We further conclude, based on Joint Applicants' testimony and other record evidence, that the commitments proffered by Joint Applicants sufficiently address the concerns we had with respect to matters referred to in question 7. As Joint Applicants and Staff explain, most of the issues cited in question 7 are already being addressed in other~~

~~dockets. We believe it is appropriate to leave those issues to their own proceedings and not prejudge those other cases as part of our decision here. Any ruling in those cases will, of course, apply to the merged SBC/Ameritech and specifically to Ameritech Illinois.~~

Joint Applicants fail to address the Commission's concerns about the availability of the UNE platform. This Commission has ordered Ameritech to make combinations of network elements available to CLECs. Docket No. 96-0486. We find that once again Joint Applicants' commitment regarding the UNE platform does not reduce the hurdles for competitors that the merger poses. Joint Applicants make no independent commitment regarding the UNE platform in Illinois—relying on only the meager FCC commitment for residential POTS lines subject to a cap of 7.8% of Ameritech's residential lines in Illinois. This simply does not go far enough. To overcome the competitive problems of the merger, Joint Applicants must submit to conditions that may go beyond what the current law requires. This is not unreasonable given the status of competition here and the elimination of the most significant potential competitor. Joint Applicants commitment here does not recognize that fact. In addition, advanced services are not part of the proposed platform at the federal level. The Commission thus proposes the following language to ensure the availability of the platform in Illinois.

Each ILEC shall provide unrestricted availability of combinations of such UNEs, including shared transport and the UNE-Platform or UNE-P without any non-cost-based non-recurring charges, sunset period (other than as stated herein), 'glue' charge, or geographic restrictions, consistent with 47 C.F.R. § 51.315, AT&T Corp. v. Iowa Utilities Board and other applicable law. As used herein, the UNE-Platform or UNE-P means access to the combination of UNEs necessary to provide a telecommunications service at the total element long-run economic cost (TELRIC) of such UNEs.
In any central office where the ILEC (or any of its regulated or unregulated affiliates) has begun to offer xDSL services, then for all loops served by that central office, the ILEC shall make available the xDSL network elements (including all DSL functionalities such as DSLAMs) on a combined basis as a UNE-Platform. This obligation is in addition to and independent of the obligation of the ILEC to make individual UNEs available or its obligation to make its xDSL retail services available at a wholesale discount."

~~One issue which generated comment concerns the so-called UNE Platform. Joint Applicants have explained their commitment to provide pre-existing combinations of UNEs, with no "glue charge," subject to the outcome of the FCC's UNE Remand Proceeding, and their FCC commitment to make the UNE platform available for residential customers, subject to certain conditions. We find this approach to be acceptable. As explained with respect to shared transport under question 3, above, Joint Applicants should not be required to forfeit in this proceeding any legal rights that they may have when the FCC issues its decision in the UNE Remand Proceeding. In the meantime, however, Joint Applicants have committed to provide shared transport and to also abide by the "status quo" under their interconnection agreements, even~~

~~though one could argue that the Supreme Court's vacatur of FCC Rule 319 relieves them of any obligation to do so. We therefore find that Joint Applicants' commitments represent a procompetitive benefit to Illinois CLECs and end-users that would not be available absent the merger.~~

SAVINGS

8. ***Provide a total and complete breakdown detailing Joint Applicants' estimates of the costs and savings associated with this merger. Explain the methodology and assumptions used to arrive at the estimates for overall Ameritech savings, Ameritech Illinois savings, and SBC savings. Explain how these savings are spread between the Ameritech states. Explain the methodology and assumptions used to arrive at the estimates for overall Ameritech costs, Ameritech Illinois costs, and SBC costs. Explain methodology used to calculate the total estimated costs of this merger, including a breakdown of the component figures which add up to total estimate of costs.***

Joint Applicants' Position

Joint Applicants continue to oppose the flow-through of merger-related savings to ratepayers via mandatory, Commission-imposed rate reductions or credits. Nevertheless, SBC states that, during due diligence, it prepared an estimate of annual recurring cost savings, and the one-time, non-recurring investment necessary to achieve those savings, that could result from the merger of SBC and Ameritech. These estimates were based upon the understanding of Ameritech and SBC operations and a general understanding of the business. SBC's estimates were based on available data – some of which were derived directly from FCC ARMIS Reports, experience gained in Pacific Bell's re-engineering efforts prior to the SBC/PTG merger, and significant experience gained in planning for and ultimately implementing the integration of SBC and PTG. SBC also used its experience to estimate the timing and ramp-up (implementation period) of savings and the investment required to achieve those savings. SBC witness Mr. Kahan explained in his Direct Testimony that merger savings at this point are "only estimates" and that the actual savings realized at Ameritech Illinois "could be lower or higher, they could be realized later than anticipated, not be realized at all or be realized in different areas than we estimate or anticipate." (SBC/Am. Ex. 1.0 at 58) Joint Applicants also emphasized that there are substantial costs incurred to obtain savings and that there are significant costs created by the other commitments made by Joint Applicants, in anticipation of the merger and those latter costs are not factored into the total present value of merger savings.

SBC estimated a three-year implementation period would be required to achieve annual recurring cost savings in the amount of $1.43 billion across the combined companies. SBC also estimated that a one-time, non-recurring investment of $1.45 billion would be necessary during the three-year implementation period to achieve the

recurring cost savings. The net effect is negative savings in the first year (*i.e.*, more investment than savings), positive savings in the second year, increasing in the third year, and achieving the run-rate amount of $1.43 billion each year thereafter.

Joint Applicants state that the estimated $1.43 billion recurring cost savings includes $1.17 billion in expense savings and $0.26 billion in capital savings. In deriving the cost savings estimate, SBC broke the business functions down between Support Functions, Administrative Functions, Telephone Company Operations, Procurement Functions and Other Lines of Business.

Joint Applicants explained that areas of possible savings could arise from implementation of best practices such as the means of dispatching technicians to handle trouble reports or conducting engineering or data processing on an in-house or outsource basis. They also stated that another area of possible savings could be in the area of deployment of DSL, since SBC's TRI research arm has conducted much research in this developing area and Ameritech therefore would not have to perform such research.

The estimated $1.45 billion one-time, non-recurring investment required to achieve recurring cost savings is a cumulative estimate over the three-year implementation period. Again, SBC relied on experience from the PTG and SNET mergers to derive this estimate. In general, SBC estimated a ratio of recurring savings to non-recurring investment for each category (*e.g.*, a ratio of 50% means $1 of recurring savings requires a $0.50 one-time investment). Specifically, SBC estimated recurring savings in the Support category require a 133% one-time investment, Administration 50%, Telephone company 60%, and Procurement 25%.

The aforementioned estimates apply to a combined SBC/Ameritech. SBC only prepared estimates at the SBC and Ameritech holding company level, not on a jurisdictional basis. For purposes of the Illinois proceeding, Mr. James S. Kahan, with the help of Mr. Gebhardt, prepared similar estimates that would fall under this Commission’s jurisdiction. Using the same analysis, Mr. Kahan, at 57-66 of his Direct Testimony (SBC/Am. Ex. 1.0), explained how SBC computed estimated merger savings attributable to Ameritech Illinois' regulated, intrastate services for a period of three years. Of SBC's previous categories, Mr. Kahan excluded Other Lines Of Business, which, by definition, would not be related to any regulated telephone company operations. Mr. Kahan's numbers identify only savings attributable to Ameritech Corporation and exclude savings attributable to SBC Communications Inc.

Since no synergy analyses were done on a state-specific basis, Mr. Kahan explains how each of the categories was factored by 25.3% to appropriately reduce total Ameritech Corporation numbers to Ameritech Illinois, the company whose cost savings would be subject to the Commission's analysis under 7-204(c). (*Id.* at 63).

Mr. Kahan then factored the Ameritech Illinois number to exclude interstate

savings that are outside the Commission's jurisdiction (Id. at 63, Table 5), resulting in the total analysis of savings attributable to Ameritech Illinois' regulated, intrastate services (Id. at 64, Table 6). As reflected in Table 6, that savings reached approximately $90 million after three years and the investment of $67 million in costs to achieve those savings. (Id.) After subtracting the cost of achieving savings over those three years and reducing the three years of savings to its present value using a discount rate of 9.5% (*id.* at 65), the total present value of the estimated merger savings attributable to Ameritech Illinois' regulated, intrastate services in the first three years following the merger would be $31 million. Were the Commission to order a savings flow through based upon this estimate via a one time rate credit, the $31 million would have to be grossed up for taxes by a factor of 1.7. The resultant figure ($52.7 million) represents 100% of the present value of the pretax merger net savings. Taking into account the Alternative Regulation Plan and the commitments made by the Joint Applicants in this proceeding, any allocation of such savings should be limited to no more than 25% of that amount (i.e., $13.175 million).

Staff's Position

Staff agrees with the Joint Applicants that the use of actual data is preferable since it would provide a more accurate result than the use of estimates. Moreover, in this case, SBC and Ameritech have provided only high level estimates with no detailed support. Staff witness Marshall testified that such data is much less reliable than budgeted data or forecasted data based upon a substantive business plan.

According to Staff, a conservative approach to estimating merger savings is initially dictated by the necessity of obtaining the endorsement of financial advisors and approval of shareholders. Additionally, company management would very much like to report to shareholders and the financial community that the actual savings achieved were greater than the estimated savings. On the other hand, Staff notes that in the SBC/PacTel merger, projected savings were underestimated by approximately 100%.

Staff views Ameritech Illinois as uniquely situated for the utilization of actual savings data because of the annual price adjustments that it must file in accordance with its alternative regulation plan, while rate of return regulated companies generally experience a greater regulatory lag. In the event that the Commission orders savings to be shared with ratepayers, Ameritech Illinois and Staff have agreed upon the appropriate mechanism for reflecting such savings in annual price cap filings.

Staff maintains its position that the portion of merger savings allocable to Illinois regulated operations should flow to Ameritech Illinois' customers. As Staff witness Yow previously testified, such an allocation of both enhanced revenues and merger savings would result in Illinois ratepayers receiving approximately 6% of the total anticipated merger synergies. Staff also maintains that use of actual savings is preferable to the use of estimated savings. Staff and Ameritech Illinois have agreed upon a mechanism whereby actual savings would be reflected in Ameritech Illinois' annual price adjustment filing under its alternative regulatory plan.

Staff has previously attempted to obtain detail supporting the Joint Applicants' estimate of savings requesting account specific information in data requests JRM 1.02 and JRM 1.03. The Joint Applicants responded that no data was available by USOA account level. In the re-opened case, Staff again requested supporting data in the greatest level of detail available. The Joint Applicants provided no more detailed information explaining that their estimates were done at a macroeconomic level and did not include any state specific analyses of either savings or the costs to achieve those savings. Staff tells us that the Joint Applicants have agreed to track actual costs and savings following the close of the merger. (Staff Ex. 1.02, Attachment A).

In summary, Staff maintains its position that the Commission should determine the specific types of costs that may be recovered from ratepayers and allow recovery of the reasonable costs that are directly associated with utility operations. While the Joint Applicants have not identified or quantified those costs separately in their calculation of merger synergies, such identification and quantification of specific costs is required in order for the Commission to determine the reasonableness of costs to be recovered from ratepayers. Staff believes that no cost should be netted from savings prior to a determination that such cost is reasonable and should be recovered from rate payers.

In previous matters, Staff notes that the Commission disallowed such costs as corporate aircraft, shareholder lawsuits and contingency funds and also limited the amount of severance costs that can be recovered from ratepayers in evaluating the reasonableness of merger related costs and savings. (Central Telephone Company of Illinois ("Centel"), Docket 93-0252, at. 7-14)). The Commission should also consider whether employee bonuses related solely to the closing of the merger should be recovered from ratepayers and, if so, at what amount.

Staff witness Marshall testified during re-opening that the severance plan associated with a merger is generally more generous than the severance plan absent a merger. (Marshall Direct, Staff Ex. 1.02 at 29-30). The severance plan associated with this merger is also significantly more generous than the amount (limited to no more than one years salary per employee) allowed in the Centel/Sprint merger referenced above. (Id.). For example, an Ameritech employee with 25 years of service will receive two full years salary with the second years salary grossed up for taxes in the event of a merger, but would receive a maximum of 58% of one years salary not grossed up for taxes absent a merger. (Id.). As a result, absent detailed cost information it is not possible to calculate a proposed adjustment to the costs provided by the Joint Applicants.

Staff maintains that the $31 million net present value recommended by Mr. Gebhardt should not be used to allocate merger savings to ratepayers for several reasons. First, as stated above, the use of actual data is preferable. In the event that an estimate is to be used, no net present value calculation is necessary since Ameritech adjusts its rates annually.

Staff also disagrees with the use of a three year limit on consideration of merger costs and savings based upon a premise that the market will be fully competitive within three years. Staff believes that Ameritech Illinois will still offer non-competitive services at the end of three years. Staff notes that in the event that the market does become fully competitive within the three year time frame, adoption of Staff's interim methodology will not harm Ameritech Illinois because its alternative regulation plan will cease. However, limiting consideration of costs and savings to a three-year time period will cause an adverse rate impact on customers if the market does not become fully competitive in that time frame.

In analyzing the proposed merger, the Joint Applicants calculated synergies through the year 2010 which continue to increase in each year. (Staff Exhibit 1.02, Attachment B, Proprietary). Staff believes that use of a three-year time frame is not equitable because all of the one-time costs of achieving on-going economies occur within the first three years. To the extent that these costs are determined to be reasonable, they should be amortized over the same ten-year period during which synergies are expected to be realized, absent the detailed cost information necessary to determine a reasonable recovery period for each specific type of cost.

According to Staff, the Joint Applicants oppose the use of a ten year amortization period and confuse this proposal with the annual adjustment for merger related costs and savings that the Joint Applicants and Staff have agreed to. Staff notes that the use of actual data will allow the Commission to determine the reasonableness of both the amount and the type of each cost and to set reasonable recovery periods. Staff's proposed ten year amortization of merger related costs should be made if a net present value calculation is done.

The GCI Parties' Position

GCI witness Dr. Selwyn testified on the savings issue. Dr. Selwyn asserted that Joint Applicants, by sticking to their original position, have failed to respond to the Commission's request in adequate detail. He further asserted that the data are available to perform a detailed calculation, and that in fact such data were used to describe the merger to shareholders when it was announced.

The remainder of Dr. Selwyn's testimony concerns his revised estimate of merger-related savings. While still applying the same methodology as in the initial stage of this case, Dr. Selwyn adjusted his computations based on an alleged error in the composite factor he had used. This error increases his projection of Illinois merger-related savings to $1.86 billion, which he proposes to flow back to ratepayers in the form of an annual $472 million rate reduction for 10 years. This flow-through could end at any time the Commission determined that effective, price-constraining competition exists in Illinois. Dr. Selwyn stated that Joint Applicants' proposed 3-year flow-through does not take account of merger savings beyond the third year, while his present-value/amortization proposal does. In the alternative, GCI proposes that 50% of $472 million present value savings be allocated to non-competitive ratepayers using Staff's distribution methodology for 10 years.

DSSA's Position

DSSA and Neighborhood Learning Network ("DSSA") argue that savings should be flowed through to ratepayers at $100 million per year for five years. This figure is derived from the same $1.4 billion overall savings figure used by the Joint Applicants as a starting point. Allocating 8.75% of this figure to Illinois (the allocator purportedly used by Joint Applicants) leaves approximately $100 million a year for Illinois. DSSA recommended that, as in the SBC/PacTel merger in California, one-third of the merger savings should be allocated to an Illinois Community Technology Fund to address market failures that will result from the merger in "underserved" markets.

In the alternative, or in combination, at least one-half of the merger savings should be allocated as shareholder investments in programs in underserved market communities. If savings are $100 million per year, one-third of the savings would be $33 million, and the payment of $20 million would be deducted from that amount, and the remainder added to the Illinois Community Technology Fund.

Joint Applicants' Response

Joint Applicants reiterate that they do not believe any sharing of merger savings is appropriate and that any flow-through that does occur should be based on actual data. They state that the $31 million present value figure is based on the best available information, should the Commission choose to flow through via rate reductions or credits any of the estimated savings allocable to Ameritech Illinois but that such

estimates should not be used at all. They also assert that, if any such flow-through of estimated savings is adopted by the Commission, a three-year recovery period is appropriate because, in their view, there will be substantial competition for Ameritech Illinois' services within three years. In addition, they contend that Ms. Marshall is wrong to reject the three-year period, because she focuses solely on the possibility of some services being "noncompetitive" after three years, thus failing to account for the fact that increased competition will drive down prices for other services to an extent that would fully return any expected merger savings to ratepayers. Joint Applicants state that any rate reduction or flow-through should be interim in nature, lasting only until the Commission can deal with the savings issue in the context of Ameritech Illinois' alternative regulation plan in Docket 98-0252.

Joint Applicants state that Staff's 10-year amortization is a throwback to rate-of-regulation, in that such amortizations are fair to the utility only when a reasonable return can be guaranteed, and there can be no such guarantee for Ameritech Illinois. They further claim that Staff's amortization proposal could lead to double-counting of savings flowed-through as part of the amortized amount and as part of the X-factor in the price regulation plan. Finally, Joint Applicants observe that Staff's 10-year amortization proposal is inconsistent with its earlier proposal in this case, which flowed through actual savings on an annual basis and which was more consistent with Staff's stated desire to use actual data. As for Ms. Marshall's (and others') criticisms of Joint Applicants for not producing more specific data, Joint Applicants state that such estimates simply do not exist and that trying to "create" more specific data would require the use of factors and estimates, a task that does not render the end result any more reliable or meaningful.

Joint Applicants contend that the DSSA recommendation is inappropriate because it allocates 100% of savings to ratepayers which is totally inconsistent with Ameritech Illinois' Alternative Regulation Plan and ignores the substantial commitments made by Joint Applicants in this proceeding. They also assert that DSSA's five-year period is too long and that DSSA incorrectly relies on the absolute size of the savings flow-through in California after the SBC/Pactel merger, ignoring that Pactel is two and a half times larger than Ameritech Illinois.

As for Dr. Selwyn's testimony, Joint Applicants contend that he has simply reiterated his prior proposal, with one purported correction, and that all of the same flaws noted earlier in this proceeding still apply and require rejection of Dr. Selwyn's approach.

Commission Analysis and Conclusion

To begin, we agree with the Joint Applicants that the term "savings" in Section 7-204(c)(i) refers to an actual reduction in costs or expenses. Undefined terms in statutes are to be given their "ordinary and popularly understood meaning." Texaco-Cities Pipeline Service Co. v. McGaw, 182 Ill. 2d 262, 270 (1998). The "ordinary and

popularly understood meaning" of "savings" is a reduction in costs or expenses. See Funk & Wagnall's New International Dictionary of the English Language: Comprehensive Edition at 1120 (1987) ("save" means "to keep from being spent, expended or lost; avoid the loss or waste of" and "[t]o avoid waste, become economical"); Black's Law Dictionary at 1343 (6th ed. 1990) ("savings" means "economy in outlay; prevention of waste; something laid up or kept from being expended or lost.") Savings does not mean generating more revenue.

Looking to the particulars of Section 7-204(c), the plain language doctrine again leads us to construe "savings" as that term is ordinarily understood, namely, a reduction in costs or expenses. Hence, the urgings of Staff and certain Intervenors that we widen the pool to include "revenue enhancements" are rejected. The mere fact that the parties themselves have consistently drawn a distinction between "expense savings" and "revenue enhancements" reaffirms our belief that "revenue enhancements" is not what the General Assembly intended when speaking of "savings". Courts are not free either to restrict or to enlarge the plain meaning of a unambiguous statute and we also follow this pronouncement. Ehredt v. Forest Hospital Inc. 142 Ill. App. 3d 1009, 492 N.E.2d 532 (1st Dist. 1986).

As for the meaning of "costs", the Commission agrees with Staff that none of the one-time merger costs which relate to the change in ownership of Ameritech, such as banker or brokerage fees, legal fees, or accounting fees, constitute legitimate costs for present purposes. It is only those costs directly associated with AI's provision of service which qualify under Section 7-204(c). Hence, we agree with Staff's position to allow recovery of only those costs directly associated with the utility's operations.

Given the Commission's strong preference for dealing in matters of certainty, we believe that both the savings and the costs of this transaction as well as their reasonableness, must be determined when actual data, as opposed to estimates, are available. We further note the disparity between the result generated by the Dr. Selwyn and the estimate presented by Mr. Gebhardt, as convincing proof of the need to await actual figures. Moreover, with respect to Dr. Selwyn's savings estimate, we believe that the underlying methodology based largely on the purchase premium paid by SBC for Ameritech is not appropriate for the task. Such an analysis necessarily discounts or excludes the fact that in nearly every transaction of this type there is a multitude of factors and motives underlying both the merger decision and the size of the premium. Because the cost savings of the merger are calculations, at best, only one of the factors taken into account, they simply cannot be equated with the total premium.

We fully agree with Staff that the Commission needs to make separate rulings on both savings and costs pursuant to Section 7-204(c) requirements. This we intend to do. However, we are not persuaded by Staff's position opposing the netting of savings and costs. To the extent that costs are incurred to produce savings and are shown to be both reasonable and directly related, we agree with the Joint Applicants

that netting is appropriate. As a matter of logic, the only savings that can be experienced are net savings. Moreover, our reading of Section 7-204(c) indicates that just such a result is contemplated. We further conclude on the arguments presented, that 50% of the net merger savings allocable to AI should be allocated to consumers using Staff's distribution methodology. This strikes a fair balance considering the commitment, performance and benchmark costs which will be incurred post-merger.

In keeping with our responsibilities under Section 7-204(c) and based on the evidence of record, we direct the Joint Applicants to follow Staff's Interim Method until the appropriate mechanisms are made in the five-year review of the Plan.

To be specific, Ameritech Illinois is required to track its share of all actual merger-related savings and all merger-related costs, as herein defined, separately for the period beginning on the date that the merger is consummated and ending on March 15, 2000. AI shall submit that information as part of its annual Alt. Reg. filing on April 1, 2000. Furthermore, this information will continue to be provided in Ameritech's annual price cap filings until such time as an updated price cap formula has been developed in Docket 98-0252. In the annual price cap filings, AI is required to flow-through merger savings net of reasonable costs in the manner here described for a period of three years. A period of three years represents a reasonable time frame given the state of competition in Illinois.

It is the ruling of this Commission that the net merger-related savings should be allocated to Ameritech Illinois' customers as follows:

(1) Carriers purchasing AI's UNEs, interconnection, and transport and termination services will benefit from merger-related savings through updated rates resulting from modification of its TELRIC, shared and common costs.

(2) Once the share of the merger-related savings allocable to UNEs, interconnection, transport and termination purchasers have been identified, the remaining balance of savings will be allocated to interexchange, wholesale and retail customers. This will be done by dividing the remaining merger-related savings between IXCs on the one hand and end users (whether served via retail or wholesale) on the other, based on the relative gross revenues of each of these two groups.

As per Staff's recommendations, which we find to be reasonable, IXCs' share of the merger-related savings should be allocated to those customers through reductions in access charges, including the intrastate PICC. End users' share of the merger-related savings should be allocated as a credit on a per network access line basis to ensure that business customers do not receive a larger portion of the merger-related savings than residential customers.

NATIONAL-LOCAL SUBSIDIARY

9. ***A clear explanation of the National Local Subsidiary, as used in this docket, and the impact that this subsidiary would have on retail rates. Explain what happens to AI's retail rates should the applicants transfer the top-revenue customers to this subsidiary for telecommunications services. Explain what the revenue impact would be for Ameritech Illinois if the top customers are shifted to the National Local Subsidiary. Explain if the National Local Subsidiary would provide local service for its customers in Illinois. Explain whether the National Local Subsidiary would be certified as a CLEC in Illinois. Explain whether the National Local Subsidiary would be treated as any other CLEC would be treated in its interactions with AI.***

Joint Applicants' Position

Joint Applicants note, as a threshold matter, that this issue was not the subject of this docket. Joint Applicants state that they did not make it a subject of this docket because the National-Local Subsidiary will not operate directly in Illinois for the foreseeable future.

Joint Applicants explain that they intend to pursue the primary piece of the National-Local Strategy -- entry into out-of-region markets (where neither SBC nor Ameritech is the incumbent LEC) -- through a newly formed subsidiary. However, they believe that the use of a National-Local subsidiary out-of-region will have absolutely no impact on the operations of Ameritech Illinois or on its retail rates.

SBC's Mr. Kahan explained how Ameritech Illinois would participate in the National-Local Strategy. Specifically, Joint Applicants' incumbent LEC operating companies like Ameritech Illinois would cooperate with the National-Local Subsidiary in the same way that incumbent LEC cooperate today with companies like AT&T and MCIW to provision multi-state service contracts. Joint Applicants note that it is relatively common business practice even now for a national carrier like AT&T or MCIW to bid on Requests for Proposals ("RFPs") from and to enter into contracts with national or multinational companies for comprehensive telecommunications service running the gamut from local exchange to interstate, interLATA across the country or around the world. In order to respond to such RFPs and enter into such contracts, those carriers will, in essence, subcontract with LECs like Ameritech Illinois to provide certain local exchange services. Those local exchange services are acquired out of the LEC's tariffs. Moreover, subcontracting for such services does not require certification since, under these circumstances, Ameritech Illinois is the local service provider for state certification authority purposes.

A primary purpose of the proposed merger is to allow Joint Applicants to compete effectively for the high volume, high revenue customers that enter such contracts. Unlike their competitors, however, Joint Applicants (who will ultimately view

the economic return on serving these customers on a consolidated basis) do not have an incentive to move such customers off the incumbent network, given their prior and continuing investments in the network. Since these network costs are driven far more by whether the traffic is actually carried on the incumbent network than by who retails the traffic, the customers of the incumbent network will benefit from the existence of the National-Local Subsidiary and its strong incentives to continue to use the incumbent network.

Under the approach to be followed by Joint Applicants, at least initially, the National-Local subsidiary will not require certification in Illinois and the National-Local subsidiary will not itself provide local exchange services in Illinois. Those services will continue to be provided by Ameritech Illinois by authority of Ameritech Illinois' existing certification and under Ameritech Illinois' tariffs. However, all dealings between Ameritech Illinois and the National-Local Subsidiary will be controlled by federal and state affiliate transaction rules, and will be subject to review by the Commission. Thus, Joint Applicants maintain that there will be no impact on retail rates in Illinois.

Joint Applicants add that if at some time in the future they wish to have the National-Local Subsidiary provide local exchange service in Illinois, they would first have to seek appropriate local exchange certification from this Commission. As indicated above, Joint Applicants do not presently intend to pursue their National Local Strategy in this manner. Nevertheless, to address the apparent concerns in Chairman Mathias' letter and stated by Staff, Joint Applicants are willing to make an additional commitment not to seek local exchange certification for their National-Local Subsidiary in Illinois prior to January 1, 2003, which should be more than enough time for SBC to obtain interLATA approval under Section 271 of TA96 in Illinois.

Joint Applicants further state that even if the National-Local Subsidiary becomes a CLEC in the State of Illinois after January 1, 2003, it could not "transfer the top revenue customers to this Subsidiary for telecommunications services" as posited by the Commission's question. First of all, they argue, that CLEC would have to enter into an interconnection agreement with Ameritech Illinois. Any interconnection terms it received would have to be made available to other CLECs in Illinois pursuant to TA96. Also, any such transaction between the National-Local Subsidiary and Ameritech would continue to be an affiliate transaction covered by applicable federal and state affiliate transaction rules, a limitation that no other CLECs would face. In addition, the National-Local Subsidiary, as an Illinois CLEC, could not receive any preferential terms or treatment from Ameritech Illinois that were not provided to other CLECs on a non-discriminatory basis.

Joint Applicants state that if, under these circumstances, the National-Local Subsidiary competed for the customers of Ameritech Illinois, it would have the same array of options to serve those customers as any other CLEC. However, Joint Applicants have noted their intent and incentive to continue to utilize the Ameritech Illinois network in serving those customers.

Staff's Position

In response, Staff witness Graves testified that the Joint Applicants may wish for their National Local customers to be served through one of its strategic partners such as Williams Communication or Concentric Communications rather than establishing a separate subsidiary. Staff Ex. 4.02, at 24. He further testified that if the Joint Applicants wished to serve National Local customers itself, it would have to utilize a separate subsidiary in incumbent markets because SBC will only be able to provide in-region, inter-LATA telecommunications services (once Section 271 relief is granted by the FCC) through a separate affiliate. See, 47 U.S.C. Sec. 272(a)(1)(A), (2)(B). The Joint Applicants concede this fact. Amended Joint Application, Ex. 6 at 28 n. 24; SBC-Ameritech Ex. 1.3 at 18.

Staff acknowledges the Joint Applicants' change in its commitment for the National Local Subsidiary. However, Staff still has concerns regarding this issue. One such concern is that a combined SBC/Ameritech would be able to exercise considerable market power even through an affiliate. This market power could be utilized to cross subsidize non-utility activity, misallocate costs, and possibly cause adverse rate impact to captive customers. It is far from certain that sufficient competition to restrain SBC/Ameritech's market power will develop by January 1, 2003. In order to guard against SBC/Ameritech utilizing its market power in a non-competitive manner the Commission could either: (1) review the status of competition in 2003 and decide at that point whether of the National Local affiliate can enter as a CLEC in Illinois or (2) restrict the entry National Local affiliate until SBC/Ameritech holds less than a 50% market share of the local market in Illinois.

AT&T's Position

Mr. Gillan testified that a principal reason for the merger is Joint Applicants' National Local Strategy, which would be implemented via the National Local Subsidiary ("NatLoCo"). Mr. Gillan testified that the merger would establish NatLoCo as a company serving nearly 40% of the nation's multi-line business market within its franchise footprint. Understanding how NatLoCo intends to leverage its exchange footprint against rivals is the single most important competitive issue of the merger. Creating a massive footprint of incumbent facilities is the reason for the merger – and is also the reason the merger poses a threat to competition. Mr. Gillan explained that by capturing more of a customer's locations within the footprint of its affiliated ILECs, SBC can then bundle these services together in a package that only an equally large ILEC could match. He testified that the only way to lessen the potential harm to competition from this strategy would be through conditions that: (1) reduce the market power of the combined entity, and (2) prevent the combined entity from leveraging the market power that remains. AT&T Ex. 1.2 (Gillan DOR), at 6-7.

Mr. Gillan framed the fundamental questions as follows: What will be the relationship between Ameritech-Illinois (SBC's ILEC) and NatLoCo (SBC's "CLEC")? Does Ameritech-Illinois intend to treat NatLoCo like any other CLEC? Or, will Ameritech-Illinois discriminate in favor NatLoCo, thereby enabling SBC to bundle monopoly (i.e., within franchise) services with competitive (i.e., beyond franchise) services into a single package that only another massive ILEC can match? Id. at 21-22.

Mr. Gillan testified that the Joint Applicants apparently envision an arrangement whereby Ameritech-Illinois would offer and provide local service in Illinois, while NatLoCo would have some role in "coordinating" the services of SBC's ILEC affiliates to give the impression of a single provider. In effect, Mr. Gillan explained that Ameritech-Illinois would evidently become the Illinois arm of SBC's National Local Strategy. Moreover, Mr. Gillan noted that NatLoCo would have the appearance of competing in Illinois, without any formal legal standing. Id. at 23, *citing* SBC/Ameritech Exhibit 1.3 (Kahan DOR), at 21 and Direct Testimony of Thomas Reiman at 25, Indiana Utility Regulatory Commission Cause No. 41255.

Mr. Gillan testified that the Joint Applicants indicate that they have no intention to treat NatLoCo like any other CLEC. Mr. Gillan noted that NatLoCo will not operate as a CLEC in Illinois at all – and, therefore, will not have to overcome the barriers that Ameritech throws in the way of legitimate entrants trying to buy network elements and/or interconnection as arm's length competitors. Instead, NatLoCo will work "cooperatively" with Ameritech-Illinois in some vague and undisclosed manner. Mr. Gillan observed that the Joint Applicants' never suggest (and, when pressed, deny) that services/facilities provided by Ameritech-Illinois to NatLoCo would be available to other CLECs in any manner. Id. at 24, *citing* SBC/Ameritech Exhibit 1.3 (Kahan DOR), at 20-21.

Mr. Gillan testified that the Company has made clear that whatever the relationship between Ameritech-Illinois and NatLoCo, it has no obligation to extend similar – much less, nondiscriminatory – treatment to other competitors. Id. at 25, *citing* SBC Ameritech Response to AT&T Request 1-20(b). Moreover, Mr. Gillan noted that general questions concerning the relationship between Ameritech-Illinois and NatLoCo were met with stonewalling by Ameritech. *See* AT&T Ex. 1.2 (Gillan DOR), at 24, Attachment 1.2.2, SBC-Ameritech's response to AT&T 1-19. Mr. Gillan testified that SBC-Ameritech's response to AT&T 1-19 is particularly important because that request essentially sought detailed answers to the same question posed by the Commission – exactly how will Ameritech-Illinois provide service to NatLoCo, and will it treat all CLECs the same? He pointed out that, even at this late date, the Joint Applicants' response to AT&T 1-19 demonstrates that they would rather deflect questions than defend their intention. Id. at 26.

Mr. Gillan testified that, aside from Ameritech-Illinois' intention to provide (some undisclosed mix of) services/facilities/marketing to NatLoCo that it will not make

available to other CLECs, there is also the issue as to what NatLoCo will pay Ameritech-Illinois for these services/functions that only it can obtain. With respect to this concern, the Joint Applicants' offer vague, empty responses to pointed questions. For instance, when pressed for details regarding the governing rules on dealings between Ameritech Illinois and the NatLoCo, the Joint Applicants responded weakly that "~~presumeably~~presumably 47 CFR § 32.27 and § 64.901 and any other applicable affiliate rules" would govern. Id. at 26, *citing* SBC Ameritech Response to AT&T 1-20(c). Mr. Gillan was troubled by Joint Applicants response because the Joint Applicants apparently cannot now bring themselves to agree that any specific rule would unambiguously apply. Further, although the Joint Applicants assert that any cost allocation would be subject to review by this Commission, they did not cite a single Illinois rule that would be within the Commission's jurisdiction. Both rules they offer – which don't even apply to the problem at hand – are federal, and not state, rules. Id. at 28.

Mr. Gillan testified that the Joint Applicants did not directly answer the Commission's question as to "whether the National Local Subsidiary would be treated as any other CLEC would be treated in its interactions with Ameritech-Illinois." But, he pointed out, through inference and discovery the answer becomes clear -- Ameritech-Illinois will not treat NatLoCo like other CLECs. Mr. Gillan contended that although SBC tried to soften the harshness of this answer with vague references to "cost allocation and affiliate transaction rules," none of the cited rules would ensure that Ameritech-Illinois would treat NatLoCo like any other CLEC. Id. at 30.

Mr. Gillan asserted that if there is to be a NatLoCo, then it is critical that other CLECs have an opportunity to compete with it on a level playing field. This means that NatLoCo should not be allowed to create national local packages in "cooperative partnership" with its ILEC affiliates. He testified that NatLoCo, like any other CLEC, should be required to overcome the same entry barriers (such as primitive OSS and efforts to limit the availability of UNEs) that its ILEC affiliates impose on every other market participant. Id. at 31.

Mr. Gillan testified that in order to assure that Ameritech Illinois treats NatLoCo like any other CLEC it would be necessary, first, to bar NatLoCo from including, in any national bundle that it offers, any service offered by Ameritech-Illinois. Mr. Gillan asserted that the only way that Ameritech-Illinois can treat NatLoCo like other CLECs is if NatLoCo offers services in Illinois as a separate entity, and subject to rules which recognize the unique problems that arise when a CLEC is a wholly-owned affiliate of an ILEC. He explained that the key problem stems from a single, undisputed fact that must be recognized in every Commission policy that addresses Ameritech-Illinois' relationship to NatLoCo: Because these companies have the same stockholder, the price that NatLoCo pays to Ameritech-Illinois for services/facilities is irrelevant to its economic behavior. All that matters is the cost that Ameritech-Illinois incurs. Mr. Gillan explained that this means that the most important restriction that can govern Ameritech-Illinois' relationship to NatLoCo is that NatLoCo be permitted to buy from Ameritech-

Illinois only those services/facilities that are: (1) available to any other CLEC, and (2) are priced at rates based on economic cost. Id. at 32.

Mr. Gillan testified that it is important that the price of any service/facility that Ameritech-Illinois provides to NatLoCo must be cost-based because NatLoCo and Ameritech-Illinois are owned by the same entity. Consequently, the price that NatLoCo pays Ameritech-Illinois is nothing more than shifting dollars from one entity to another. Mr. Gillan explained that NatLoCo's "cost" for services/facilities purchased from Ameritech-Illinois becomes Ameritech-Illinois' revenues. When costs/revenues are consolidated to determine SBC's earnings, the transaction "nets out" with no effect on corporate profits. Id. at 32-33.

Mr. Gillan pointed out that the Joint Applicants agree that they will compete based on the combined effect on Ameritech-Illinois and NatLoCo, that it will be the consolidated return from a customer that will determine their competitive behavior. He noted that the principal implication is that the Commission must always require that whatever service/facility Ameritech-Illinois provides to NatLoCo, the facility must be priced at its forward-looking economic cost and be available to other CLECs on identical terms and conditions (including ordering and provisioning using the same OSS). Other approaches will simply fail. Id. at 33-34.

Mr. Gillan similarly noted that "allocation" rules that allegedly divide costs between Ameritech-Illinois and NatLoCo provide the illusion of protection without the effect. Moreover, he found this approach is even more troubling because it implies both that the transaction is not cost-based and the service/facility will not be available to other CLECs. Mr. Gillan also asserted that the Commission must prohibit NatLoCo from simply "reselling" Ameritech-Illinois' services because service-resale is inherently discriminatory and favors an affiliate of an ILEC such as NatLoCo. Id. at 34-35.

Mr. Gillan testified that service-resale by an ILEC's affiliate uniquely advantages the affiliate and is inherently discriminatory. He explained that a wholly-owned affiliate like NatLoCo is able to use resale within the franchise of its affiliated ILEC because none of the financial and market constraints that would affect a legitimate entrant apply. Id. at 35.

For instance, Mr. Gillan explained that under service resale, Ameritech-Illinois would continue to receive access revenues for each of NatLoCo's customers. In effect, NatLoCo would be nothing more than an uncompensated marketing agent for Ameritech-Illinois' access service. Mr. Gillan noted that while this relationship would be acceptable to NatLoCo, no independent CLEC could succeed in such a role. Mr. Gillan pointed out that access revenues would figure prominently in the consolidated return enjoyed by NatLoCo and Ameritech-Illinois, but would figure just as prominently as an actual cost for any CLEC that provided both local and long distance service. Id. at 35-36.

Furthermore, Mr. Gillan pointed out that the defining constraint of resale is that the CLEC-reseller can only offer services that are identical to those of the incumbent. This limitation, however, could actually work to NatLoCo's advantage. He explained that far from being concerned with an inability to establish a unique product, NatLoCo would want customers to perceive it as the incumbent – the goal would be to trade Ameritech-Illinois' monopoly legacy and reputation. Because of the inherent limitations of service resale, virtually every major carrier that has tried to compete using service resale -- at least, every unaffiliated carrier -- has terminated its resale activity. Id. at 36.

Mr. Gillan emphasized that competition would be harmed if SBC were allowed to bundle monopoly and competitive services across its vast post-merger footprint – a footprint that no other carrier comes close to replicating. He explained that whether the harm is achieved by bundling NatLoCo's services with those of Ameritech-Illinois – or by NatLoCo reselling the same Ameritech-Illinois service – the result would be a crowding out of legitimate competitors that have no base of incumbent customers to leverage. Id. at 36.

The GCI Parties' Position

GCI contends that Joint Applicants have not been responsive to the Commission's question because they have failed to specifically address the impact of the National Local Strategy on retail rates. GCI witness Dr. Selwyn argues that the Strategy will have an adverse impact on Illinois retail rates because it will require a national pricing structure, including volume and incentive discounts, and such discounts would be granted by sacrificing revenues in Illinois. Dr. Selwyn asserts that Joint Applicants have already admitted that they will finance the National-Local Strategy with revenues from core local services. GCI contends that Joint Applicants would finance the Strategy and make-up for lost core revenues by either seeking to modify Ameritech Illinois alternative regulation plan (*e.g.*, by eliminating or reducing the X factor), or by declaring services to be competitive and immediately increasing prices, even when there is no actual competition. GCI claims that Ameritech has employed the latter strategy in both Illinois and Indiana in the past.

Sprint takes no position on the National Local Subsidiary's effect on Ameritech Illinois rates. Sprint states, however, that the Commission should be aware of proposals made by Joint Applicants at the FCC regarding providing advanced services with a separate affiliate. Mr. Kahan testified that the National Local Subsidiary may or may not be the company that provides advanced services. The decision has not been made. (Tr. at 1946). If the FCC proposals creation of a separate affiliate apply to Illinois (the record is not clear on that point), the advanced service proposals actually retreat from the obligations of under current law that Joint Applicants have and can severely retard competition in the advanced services market. The anticompetitive problems with Joint Applicants' separate affiliate proposals include avoidance of the unbundling requirements of Section 251 and letting the ILEC perform many operations for the affiliate currently prohibited under law.

Joint Applicants' Response

In response to Staff's concerns about the length of the period until the National-Local Subsidiary would seek certification as a CLEC in Illinois, Joint Applicants agree not to seek CLEC entry in Illinois until January 1, 2003, a two-year extension from their initial proposal. Mr. Kahan's rebuttal testimony also provided detail on the operation of the National-Local Subsidiary, which will obtain local services from Ameritech Illinois' tariffs and be subject to all applicable state and federal affiliate-transaction rules. Mr. Kahan added that the operation of the National-Local Subsidiary will have no adverse impact on retail rates in Illinois.

Regarding Staff witness Graves'~~s~~ concerns about the impact on Ameritech Illinois' costs and revenues of moving customers off the Ameritech Illinois network, Joint Applicants explained that customers of the National-Local subsidiary would continue to use Ameritech Illinois' network – unlike customers stripped away by CLECs using their own facilities. Joint Applicants added that because network costs are driven far more by actual usage than by who retails the traffic, Illinois customers will benefit from an arrangement that will help ensure that traffic will be carried on Ameritech Illinois' network.

With regard to AT&T's request that the National-Local Subsidiary be treated as a CLEC, Joint Applicants contend that this will occur when the Subsidiary becomes a certified CLEC, but until that time it will provision service in Illinois through a subcontracting arrangement. Joint Applicants also note that AT&T's proposal is at odds with Staff's desire to delay the Subsidiary's operation as a CLEC, and that they believe the commitment not to seek CLEC certification until January 1, 2003 strikes a balance between these positions. In addition, Joint Applicants argue, AT&T's proposal does not actually treat the National-Local Subsidiary as a CLEC because it would bar the Subsidiary from reselling Ameritech Illinois' service. Joint Applicants could not agree to AT&T's suggestion to take away an entirely lawful means of CLEC entry from the National-Local Subsidiary, and expressed doubt that such a restriction would be legal.

As for AT&T's suggestion that it would be improper for the National-Local Subsidiary to engage in joint marketing with Ameritech Illinois, Joint Applicants point out that even under the interLATA provisions of TA96, Section 272 (47 U.S.C. § 272) allows a Bell operating company ("BOC") to use a separate affiliate to market the incumbent affiliates' local exchange services if the BOC gives other carriers the same opportunity.

Turning to GCI's suggestion that the National-Local Strategy will increase local rates, Joint Applicants deny that any such impact is likely or even possible. They explain that the purpose of the National-Local Strategy is to *keep* large business customers, which will provide revenues for the entire Illinois operation and benefit ratepayers, shareholders, and employees. They also note that the National-Local

Subsidiary will purchase services from Ameritech Illinois' tariff, meaning that Dr. Selwyn's alleged concern about revenue-reducing discounts is baseless; any discounts offered in Illinois will be specifically available under an approved tariff. Finally, Joint Applicants reject any claim that they could reclassify services as competitive and increase rates for these services to fund the National-Local Strategy, as that gives no credit to the Commission's enforcement authority and oversight of service classifications. Joint Applicants also refute GCI's claim that there will be less regulatory oversight if the merger is approved, stating that Dr. Selwyn's description of proceedings in Connecticut and SBC's conduct there is entirely incorrect and, in any event, irrelevant to the issues in this case.

Commission Analysis and Conclusion

Joint Applicants' proposed separate affiliate conditions at the FCC will not be applied here in Illinois. They relieve Joint Applicants from complying with applicable law and will not serve to reduce any of the anticompetitive effects of this merger.

~~We conclude that Joint Applicants' commitments regarding the National-Local Subsidiary – including the commitment not to seek certification as a CLEC in Illinois until 2003 – adequately address our concerns and provide appropriate assurance that the merger will have no adverse impact on retail rates. It is important to remember that the standard under Section 7-204(b)(7) is whether the merger is likely to have an adverse rate impact on retail customers. Given Joint Applicants' commitment, there is no possibility of such an adverse impact for at least three years, by which time the telecommunications industry may well be unrecognizable as compared to today. Consequently, Joint Applicants' commitment removes any conceivable concerns about adverse rate impacts on Illinois customers. At the same time, the commitment represents a procompetitive benefit accruing to CLECs and end-users in Illinois that would not be available absent the merger.~~

~~We reject AT&T's request to require the National-Local Subsidiary to operate as a CLEC right away. We also see no danger of the Subsidiary being granted excessive discounts, as it will purchase services directly from Ameritech Illinois' tariffs. GCI's claims regarding the funding of the Subsidiary were raised in the earlier phase of this proceeding and are not persuasive. We retain authority over requests to reclassify services as competitive, and fully intend to exercise that authority to ensure no services are misclassified.~~

SECTION 251

10. *A clear demonstration in the record regarding compliance with Section 251 of the Telecommunications Act of 1996 in Illinois. If there is not compliance, a clear explanation why compliance is not feasible. Also, Joint Applicants should immediately establish, upon an amended filing, a collaborative process to address any concerns raised by Staff regarding compliance with this section.*

Joint Applicants' Position

Ameritech Illinois states that the proper gauge of "compliance with" Section 251 is whether the incumbent has negotiated and entered interconnection agreements as required by Section 252 and is meeting its obligations under those agreements. Ameritech Illinois states that it has a solid record of such compliance, in that it willingly negotiated and arbitrated interconnection agreements with every requesting CLEC and is currently a party to over 60 different agreements, all of which are on file with the Commission. Every one of these agreements has been reviewed and approved by the

Commission under Section 252(e) as being non-discriminatory and consistent with the public interest and/or Section 251. Moreover, Ameritech Illinois has been successfully meeting its myriad contractual obligations under these Commission-approved agreements.

Section 251 Commitment

Although Ameritech Illinois strongly argues that it already is satisfying Section 251, in order to address any concerns regarding Ameritech Illinois' ongoing compliance, Joint Applicants would commit to meet with Staff within 30 days of closing to address any current issues Staff may have regarding Section 251. In addition, Joint Applicants would commit to meet with Staff on a quarterly basis to address any Section 251 concerns that may arise over time. Joint Applicants assert that these commitments, combined with Ameritech Illinois' compliance to date, should put to rest any concerns the Commission may have regarding Section 251.

Staff's Position

When Congress enacted TA96, Congress found that significant barriers to entry existed in the local exchange market because of the ILECs' control of the local exchange network. Congress designed Section 251 and 271 to eliminate some of those barriers to entry. Id. At this time, neither SBC nor Ameritech have been found to be fully compliant with those sections. To the extent that Ameritech Illinois is not in compliance with those sections, barriers to entry exist within the Illinois market. Id.

Accordingly, in the event the Commission is inclined to approve the merger, Staff opines that the Commission should require AI and SBC to demonstrate compliance with Sections 251 and 271 of TA96 in Illinois to the Commission. Id. at 72-73. Staff states that such action would not exceed the Commission's jurisdiction. The Commission would not be acting to determine whether the Joint Applicants should receive Section 271 authority to provide in -region interLATA service or even to enforce the Joint Applicants to comply with the sections' mandates. Id. at 78. Instead, the Commission will merely be reviewing compliance as a prerequisite to merger consummation in Illinois. Id.

Staff states that the Commission has two methods for reviewing compliance. First, the Commission could enter an interim order and begin a collaborative process immediately. Staff Initial Brief at 72-73. At the end of the period, the Commission could reopen the record in this proceeding to provide the Commission with information about the process and its results. Id. at 73. Second, Staff explains that the Commission can deny the merger because of its failure to satisfy subsection 7-204(b)(6). Id. At the same time, the Commission could institute a collaborative process. Id. At the conclusion of that process, Staff states that the Joint Applicants could seek to have their proposed merger approved based on the results of the process by refilling their petition with the Commission. Id.

Commission Analysis and Conclusion

The Commission's decision on this issue is incorporated in other portions of this decision, i.e. OSS, performance measurements, and access to UNEs.~~We find that Joint Applicants have been responsive to our question and that their commitment to a collaborative process with Staff satisfies our concerns. That commitment also represents a procompetitive benefit for both CLECs and end-users in Illinois that which would not exist if there were no merger. The requirements of Section 251 of TA96 are the cornerstone of introducing competition to the local exchange. CLECs take advantage of those requirements by entering into interconnection agreements with incumbent LECs. Ameritech Illinois has executed over 60 such agreements. While issues regarding the precise requirements of Section 251 continue to arise, that is to be expected under what is still a relatively new statute, and the mere fact that there are disputes is not evidence of Ameritech Illinois' bad faith or unwillingness to follow the law. Moreover, we believe that the collaborative process proposed by Joint Applicants should help identify and resolve any concerns of Staff that exist today or arise from time to time regarding interconnection agreements and Section 251. Such a process is not required by statute or rule, and therefore represents an additional merger-related benefit to Illinois.~~

D. Section 7-204(f) Conditions and Enforcement

Section 7-204(f) deals with our authority to place conditions on approval of a reorganization, and states as follows:

> In approving any proposed reorganization pursuant to this Section the Commission may impose such terms, conditions or requirements as, in its judgment, are necessary to protect the interests of the public utility and its customers. (220 ILCS 5/7-204 (f)).

The primary dispute is whether the conditions, that the Commission is authorized to impose, must be related to the findings it is required to make pursuant to Section 7-204(b),

Joint Applicants' Position

The Joint Applicants argue that no conditions of the Commission's approval of the merger are necessary. They, however, do not dispute its authority to impose conditions on its approval in appropriate circumstances. They believe that the appropriate conditions exist only if the Commission finds that a condition is necessary to allow it to make one or more of the findings required by Section 7-204(b)(1)-(7). Their argument rests on two main propositions. (Joint Applicants' Init. Br. at 99-100).

First, the only test for approval of a reorganization is that found in Section 7-204(b), and Section 7-204(f) must be interpreted in that light. According to the Joint

Applicants, Section 7-204(f) is intended to relieve the Commission from having to make

an absolute "thumbs up or thumbs down" decision under Section 7-204(b), by allowing it to qualify its approval as necessary to meet the standards of that Section.

Second, the Joint Applicants argue that reading Section 7-204(f) in a broader fashion effectively could render Section 7-204(b) a nullity by allowing the Commission to impose any type of condition, regardless of its relevance to the approval standard. They argue that this would violate the rules of statutory construction.

The Hearing Examiners also asked the parties to address whether the Commission could impose any fines or penalties along with any conditions under Section 7-204(f). (Tr. 1799-1800). The Joint Applicants responded that, while the Commission likely has the authority to impose such penalties if a condition is violated, there was no testimony or other record evidence to support the establishment of any such penalty as part of this docket. Rather, they argued, the Commission should rely on its existing enforcement powers to address any alleged violations if and when they occur. (Joint Applicants' Init. Br. at 100-101).

Staff's Position

Staff asserted that conditions imposed under Section 7-204(f) do not have to relate to the findings required by Sections 7-204(b) or (c). Indeed, Staff asserted that the only requirements under Section 7-204(f) are that any condition be reasonably required to protect the interests of the public utility and/or its customers. In taking this position, Staff deviates somewhat from the precise text of Section 7-204(f), which refers to conditions being "necessary" to protect the interests of the public utility "and" its customers. Staff contends that the term "necessary" can be read to mean "reasonably required," citing Opyt's Amoco v. Village of St. Holland, 149 Ill.2d 265, 278 (1992). Similarly, Staff argued that the term "and," while usually read as conjunctive, is frequently used inaccurately in statutes and must be read as a disjunctive (and/or) if necessary to give effect to statutory intent. (Watson v. House of Vision, 16 Ill. App. 3d 487, 501 (1973); Miller v. Consolidated Rail Corp., 173 Ill.2d 252, 266 (1996)). Staff concludes that such a disjunctive reading of "and" is appropriate here because reorganizations often may affect public utilities and their customers in different ways.

"Regarding the Commission's enforcement authority, Staff stated that the Commission's authority is generally found in Article V of the PUA. Further, Staff recommended that the Commission adopt self executing penalties to enforce any conditional approval of the proposed merger. While Staff did not recommend any specific penalties be imposed for the majority of the conditions proposed in this matter, it did make one exception. With respect to the evidence showing the persistence of the OSS>24 problem despite an assessment of penalties, Staff proposed that the existing penalty scale be increased."

Commission Analysis and Conclusion

Staff and other Intervenors urge us to impose conditions on the approval of the merger, and each of them has set out a number of different proposals. The Joint Applicants, on the other hand, argue that no conditions are warranted in this situation.

Section 7-204(f) specifically provides that in approving a proposed reorganization, the Commission may "impose such terms, conditions or requirements as, in its judgment, are necessary to protect the interests of the public utility and its customers." Our authority to impose conditions is simply beyond question. There is, however, some disagreement among the parties as to the type of conditions that we are empowered to impose.

For their part, the Joint Applicants claim that our authority to set conditions in this matter must be defined and circumscribed by the other provisions of Section 7-204. Specifically, they contend that the conditions must be limited to those necessary to make the required findings under Section 7-204 (b). Staff and Intervenors, such as the AG and CUB, argue that our authority is much broader, allowing us to impose any conditions that reasonably relate to the "public Interest". We find each of these positions to be somewhat lacking.

In our examination of Section 7-204(b), we find that the first sentence flatly states that "no reorganization shall take place without prior Commission approval." This provision grants jurisdiction to the Commission over the proposed reorganization. The paragraph continues with the requirement that a "hearing" be conducted pursuant to proper notice. (Id.). This Part envisions the creation of a tested evidentiary record. In the remaining portions of subsection (b) we are both restrained from approving a reorganization that "will adversely affect the utility's ability to perform its duties under this Act," and informed of seven specific findings that we "must" make in the course of its review. (Id.).

In all of Section 7-204(b) there is no language or other expression from the General Assembly, however, which limits the Commission from making additional findings if they are supported by the record. On this basis, we view the findings that we are specifically required to make under Section 7-204(b) to be the minimum findings. We believe as a matter of both law and common sense that additional findings certainly can and will be made in Section 7-204 proceedings. It is these additional findings which, being based on evidence, constitute a reasonable and rational source for the establishment of conditions. We further note that these findings may or may not relate directly to the specific findings that we are statutorily required to make.

A common sense reading of the entirety of Section 7-204 indicates to us that while the legislature outlined the most obvious interests needing protection in subsection (b), it could not anticipate all of what the evidence would show in any particular proceeding. We view the conditioning authority granted us under Section 7-

204(f) as a means to address and protect the utility and its customers in ways not envisioned in subsection (b) but made apparent in the course of the proceeding.

Turning again to the statutory language of Section 7-204(f) as the best indicator of legislative intent, the Commission finds that the only limitation put upon our discretion is that the conditions we attach be, in our good and informed judgment, of a type necessary to protect the interests of the company and of its customers. We believe, that it is the evidence of record in the proceeding, conducted pursuant to Section 7-204(b), which particularly informs our judgment and sets out the scope of our discretionary authority.

Having set out our construction of Section 7-204(f) we now proceed to detail the conditions we find necessary to impose in the instant proceeding. Consistent with our analysis above, each of these conditions has a basis in the record of this proceeding and is determined to be necessary to protect the interest of the public utility and its customers.

ENFORCEMENT: LIQUIDATED DAMAGES PROVISIONS

11. ***The manner, necessary actions and timetable by which Joint Applicants would incorporate incident-based, liquidated damages provisions into interconnection agreements in Illinois.***

Joint Applicants' Position

Joint Applicants attached to the Direct Testimony on Reopening of SBC witness William Dysart a full scale proposal for the incorporation of incident-based liquidation damage provisions into interconnection agreements in Illinois. (Attachment 2 to Dysart DR, SBC/Am. Ex. 10.0; *see also* Dysart SDR, Ex. 10.1 at 7-8.) In addition, in their rebuttal testimony, Joint Applicants confirmed that they would make the performance remedy plan as agreed to in Texas available to CLECs in Illinois through all new interconnection agreements or amendments to existing interconnection agreements with the caveat that the Texas Tier 1 and Tier 2 cap for liquidated damages and assessments would have to be adjusted to $90 million for Illinois based upon the number of access lines in Illinois as compared to Texas. (Dysart RR, SBC/Am. Ex. 10.1 at 5-6.) However, as Mr. Dysart explained on cross examination (Tr. 2317), that liquidated damage plan can be applied to whatever set of benchmarks ultimately results from the Illinois collaborative process on measurements and benchmarks.

Performance Measures, Benchmarks and Liquidated Damages Commitments

Joint Applicants would commit to implement in Illinois a comprehensive set of performance measures and benchmarks, with associated liquidated damages and other payments, on the following terms and conditions:

1. Within 60 days following the Merger Closing Date, SBC/Ameritech would establish a joint SBC/Ameritech task force comprised of their performance measurements subject matter experts to develop a plan to implement OSS and facilities performance measurements, associated standards/benchmarks, and remedies in Illinois.

2. The task force would review the economic and technical feasibility of adopting in Illinois each of the OSS and facilities performance measurements and related standards/benchmarks that SBC has agreed to implement in Texas as a result of the Texas collaborative process (which are outlined in the Ohio stipulation and could be made available upon request). This review would identify the differences, if any, between the underlying legacy systems and equipment, including computer, manual and data generating systems and equipment, in Texas and Illinois which may make it economically or technically infeasible to implement certain agreed to performance measurements and/or related standards/benchmarks in Illinois. If no such differences are identified for a particular measurement or standard/benchmark, SBC/Ameritech would implement that performance measurement or standard/benchmark in Illinois. As of February 23, 1999, SBC had agreed to implement in Texas 105 such performance measurements and Agreed To Standards/Benchmarks, which include the performance measurements identified in a U.S. Department of Justice March 6, 1998 letter. Should SBC agree to implement additional measurements or standards/benchmarks in the Texas collaborative prior to the date the task force is established, the task force would include such additional measurements or standards/benchmarks within its review. Additionally, should SBC agree to remedies (*e.g.*, damages, penalties, and credits) associated with one or more Agreed To Standards/Benchmarks in the Texas collaborative prior to the date the task force is established, the task force would also review such agreed to remedies to determine whether it is appropriate to implement such remedies in Illinois considering any relevant differences between Texas and Illinois.

3. Within 90 days following the Merger Closing Date, in conjunction with such task force, SBC/Ameritech would work with the Commission Staff, CLECs, and any other interested parties in a collaborative process to develop the initial performance measurements, standards/benchmarks, and remedies to be implemented in Illinois. SBC/Ameritech would meet with the collaborative participants on a regular basis to review the status of implementing each of the agreed to performance measurements, Agreed To Standards/Benchmarks, and/or remedies in Illinois. Such review would include either:

A. the timeline for implementing the performance measure, associated standard/benchmark, and remedy in Illinois; or

B. an explanation of why SBC/Ameritech believe it is not economically and/or technically feasible to implement either the performance measure, standard/benchmark or remedy in Illinois, in which case SBC/Ameritech would discuss any substitute measure(s), associated standard(s)/ benchmark(s), and/or remedy(ies) that would be appropriate.

4. Within 150 days following the Merger Closing Date, the task force would complete its initial review of performance measurements/ standards/benchmarks/remedies with the collaborative participants.

5. Beginning 120 days following the Merger Closing Date and completing within 210 days following the Merger Closing Date, SBC/Ameritech would implement in Illinois (subject to any required Commission approval, which would be timely sought), each of the Agreed To Standards/Benchmarks that they determine are economically and technically feasible to implement. Implementation would occur on a rolling basis as each Agreed to Standard/Benchmark is tested and becomes operationally ready and will fully apply to both resale and facilities, where applicable, when implemented. If SBC/Ameritech determine that it is not economically or technically feasible to implement one or more Agreed To Standards/Benchmarks in Illinois within 210 days following the Merger Closing Date, they agree to implement such Agreed To Standards/Benchmarks as soon as it is economically or technically feasible to do so.

6. Within 300 days following the Merger Closing Date, Ameritech Illinois will implement in Illinois at least 79 of the 122 performance measurements and related standards/benchmarks. Ameritech Illinois will not raise economic or technical feasibility as an excuse for noncompliance with this commitment. Within 310 days following the Merger Closing Date, SBC/Ameritech will file a letter in this docket and serve such letter upon all CLECs with whom Ameritech Illinois has an approved interconnection agreement attesting whether or not Ameritech Illinois has met this commitment. Such attestation is subject to review by the Commission. If SBC/Ameritech attest that they did not, or the Commission finds that they did not implement in Illinois at least 79 of the 122 performance measurements and related standards/benchmarks within of 300 days following the Merger Closing Date, SBC/Ameritech will make a payment of $30 million, as follows:

a. $26.25 million, as payments to CLECs providing end-user service within Ameritech Illinois' service area as of the date 300 days following the Merger Closing Date as follows:

A. A CLEC's Access Lines, for each CLEC, shall be its total number of access lines in service, including, without limitation, residence access lines, business access lines and end-user trunks, and ISDN lines, whether resold or not, measured as of the date 300 days following the Merger Closing Date, within Ameritech Illinois' current service area. Each CLEC that desires to receive any of the $26.25 million in payments must provide to the Commission Staff, no later than 330 days following the Merger Closing Date, a report identifying the number of such lines and trunks for that CLEC. Such report shall separately identify: i) the number of resold Ameritech Illinois access lines; ii) the number of unbundled loops purchased from Ameritech Illinois; and iii) all other such lines and trunks in service within Ameritech Illinois' current service area. Each CLEC submitting such a report will certify to the Commission Staff the accuracy of such report. The Commission Staff will notify each qualifying CLEC of its pro-rata share of the $26.25 million. Thirty days after the date of such notice, the Commission Staff will provide notice to SBC/Ameritech as to the appropriate disbursement of the $26.25 million. Within 60 days of receiving this notice from the Commission Staff, Ameritech Illinois will issue checks totaling $26.25 million made payable to each qualifying CLEC for the disbursement amounts listed in Staff's notice to Ameritech Illinois.

B. Total CLEC Access Lines shall be the sum of A. above for all qualifying CLECs submitting a timely report.

C. A CLEC's Pro-Rata Share shall be the ratio of A. above for that CLEC, divided by B.

D. Each affected CLEC within Ameritech Illinois' current service area shall receive a payment equal to $26.25 million multiplied by the CLEC's Pro-Rata Share; and

b. $3.75 million to the Community Technology Fund described below.

7. If Ameritech/Illinois reports that it has met the commitments as provided and that is disputed, the Commission may issue an order to resolve that dispute and may set forth-appropriate time frames.

8. For each Agreed to Standard/Benchmark to be implemented in Illinois that has an SBC agreed-upon remedy in Texas, SBC/Ameritech would discuss with the collaborative participants the proposed remedy to be attached to such Agreed to Standard/Benchmark in Illinois. After SBC/Ameritech implement an Agreed To Standard/Benchmark in Illinois, they would also implement (subject to any required Commission approval, which will be timely sought) any remedy to be associated with such Agreed To Standard/Benchmark consistent with the approach used in the Texas collaborative process. If the collaborative participants agree, SBC/Ameritech would refrain from implementing a particular remedy. Regardless of whether or not SBC agrees to remedies (*e.g.*, damages, penalties, and credits) associated with one or more Agreed To Standards/Benchmarks in the Texas collaborative, the Illinois collaborative process is not precluded from considering any proposed remedy or remedies.

9. If any participant in the collaborative process disputes SBC/Ameritech's determination that it is not economically or technically feasible to implement a particular Agreed To Standard/Benchmark in Illinois, either at all or within the 210 day time period, the collaborative participants would collaborate to resolve such dispute in the collaborative process. If any such dispute cannot be resolved through the collaborative process, any participant may ask the Commission to resolve such dispute. In any such dispute that may arise before the Commission, SBC/Ameritech retain the burden of proving to the Commission that it is not economically or technically feasible to implement an Agreed To Standard/Benchmark in Illinois.

10. Ameritech Illinois would provide a report to the Commission Staff on the results of its performance measurements on a quarterly basis, beginning the first full calendar quarter in which Ameritech Illinois has at least one full month of data for one or more performance measurements, and would report with respect to transactions affecting Illinois CLECs relative to their provision of service to end users in Illinois. If it is not economically or technically feasible, as discussed in the collaborative process, for Ameritech Illinois to report transactions on that basis, reporting would be done either on an Ameritech-wide or SBC-wide basis as reasonably determined by Ameritech Illinois after consulting with Commission Staff. Performance measurement reports would be provided to CLECs in conformance with each CLEC's interconnection agreement and would be made available electronically if so requested.

11. For a minimum of one year following the Merger Closing Date, and thereafter on an as-needed basis as determined by Staff, participants in the collaborative process would collaborate to implement any additions,

deletions, or changes to the performance measurements, standards/benchmarks, and remedies that are implemented by SBC/Ameritech in Illinois. Any participant may propose such addition, deletion, or change based upon experience with such implemented performance measurements, standards/benchmarks, remedies, or any other factor. If a dispute over any such addition, deletion, or change cannot be resolved through the collaborative process, any participant may ask the Commission to resolve such dispute. The participant proposing the addition, deletion, or change retains the burden of proving that such addition, deletion, or change should be adopted in Illinois.

a) ***On p. 32 of Exhibit 6, the Applicants refer to their willingness to discuss with the Commission mechanisms currently contemplated by the Applicants and the FCC with regard to incident-based, liquidated damages provisions. Applicants should address such developments in filings with the Commission in this proceeding.***

Joint Applicants state that the answer cited by the Commission refers only to the fact that other incident-based, liquidated damages provisions may result from the outcome of the FCC merger process, and that Joint Applicants' commitment in this proceeding is to provide the incident-based, liquidated damages provisions structured in Texas through the collaborative process. That process, Joint Applicants noted, was a product of much "give and take" by the participants.

On July 1, 1999, Joint Applicants and the FCC Staff reached agreement on a multitude of conditions that would enable the FCC Staff to recommend approval of the merger. In his Rebuttal Testimony on Reopening filed on July 9, Mr. Kahan further responded to question 11(a) by providing this Commission a copy of the proposal made to the FCC and by giving this Commission the option of adopting the FCC benchmark proposal in lieu of the so-called Texas benchmark plan. Here is the sum of Joint Applicants' responses and commitments:

> Under the FCC performance plan, as it impacts the Illinois commitments, payments would be made under the Illinois commitments, assuming the Illinois Commission includes those commitments in its final order. Thus, for the CLECs operating in Illinois, payments would first be made to the CLECs under the Illinois plan up to the Illinois cap, and then be made to the CLECs under the FCC performance plan and up to the Tier 1 federal cap, if it exceeds the Illinois cap. If the state plan requires assessments to the state – as the Illinois commitments would – then similarly, payments would be made to a public interest fund designated by the State of Illinois under the state plan up to the Illinois cap, and then to the federal public interest fund up to the Tier 2 federal cap, to the extent that it exceeds the Illinois cap. (Tr. 2268, Dysart.)

At the hearing, Joint Applicants' witness Mr. Dysart testified that the cap in Illinois will be approximately $90 million, based on the relative number of access lines in Texas, which is approximately 9.8 million, as compared to the approximately 6.9 million access lines in Illinois. (Tr. 2268-2269, Dysart.) It is Joint Applicants' understanding that Staff concurs in this method of calculating the Illinois cap. (*See*, Tr. 2273, Dysart.)

Were Illinois to forego the state assessments, then payments would be made to the federal public interest fund under Tier 2 of the federal plan, assuming SBC is not providing parity or benchmark performance for three months in a row or more than six months in any calendar year.

Finally, although this does not directly impact Illinois, if SBC is not providing parity or benchmark performance for three months in a row or more than six months in any calendar year, it must pay into the federal public interest fund under Tier 3 of the FCC performance plan in any event.

In short, in each instance, the CLEC would pursue any penalties available to it under the Illinois-ordered conditions to the full extent of those penalties. If the penalties available to the CLEC in Illinois are less than what the CLEC would be entitled to in Illinois as a result of the FCC conditions, the CLEC would be entitled to pursue its FCC remedy for any overage. (Tr. 2269, Dysart).

b) ***On pp. 33-37 of Exhibit 6, the Applicants have incorporated a recommended course of action with regard to performance measures, benchmarks and remedies similar to that reached in the stipulated agreement with the Public Utilities Commission of Ohio. How have the Applicants addressed the Commission's desires (as expressed in Attachment A, Item 11) for the incorporation of incident-based, liquidated damages provisions into interconnection agreements in Illinois with this proposal?***

Joint Applicants respond by referring to Attachment 2 to Randy Dysart's Direct Testimony on Reopening, which is the Texas plan for incident-based, liquidated damages provisions that Joint Applicants have committed to made available to CLECs in Illinois through all new interconnection agreements. In addition, Joint Applicants state that they would be willing to amend existing Ameritech Illinois interconnection agreements on request by the CLEC to include these provisions.

As discussed in response to Commission question 11(a), Joint Applicants also have proposed a liquidated-damage provision to the FCC. While that liquidated-damage provision proposed to the FCC is substantially identical to the liquidated-damage provision proposed in Illinois (*see* Tr. 2267, Dysart), the FCC provision will, if

adopted by the FCC, apply to the 20-benchmark FCC proposal as compared to the 122-benchmark plan established in Texas and proposed in Illinois.

As Joint Applicants indicated in the rebuttal testimony on reopening of James Kahan, the Commission has the option of choosing the Illinois benchmark and liquidated-damage proposal or the FCC liquidated-damage proposal. (Kahan RR, SBC/Am. Ex. 1.5 at 26-27.) However, regardless of which proposal the Commission chooses, Joint Applicants state that the implementation of the two plans will dovetail to form a complementary regime under which liquidated-damage assessments will first be available to the full extent ordered by this Commission and then, to the extent that the FCC proposal allows for any additional liquidated damages, the overage will be available under the auspices of the FCC plan.

c) ***Under the proposal on pp. 33-37 of Exhibit 6, the Applicants propose a solution to the issue of technical infeasibility. By what process is the Commission supposed to resolve technically infeasible claims by the Applicants which are disputed by competitors? If a claim of technical infeasibility is made by Joint Applicants and the Commission finds otherwise, by what process is the issue definitively resolved? Please clarify.***

Joint Applicants refer to their response to Commission question 2(a)(iii) above. They further add that SBC's experience in the collaborative process in Texas resulted in no arbitration regarding issues of technical feasibility and, as noted by Mr. Dysart, it is not anticipated that technical feasibility issues will be of particular moment in the Illinois collaborative process. (Dysart SDR, SBC/Am. Ex. 10.1 at 11-12.)

d) ***On p. 34 of Exhibit 6 under commitment 6, why have the Applicants proposed implementation of "79 of 105 performance measurements and related standards/benchmarks?" Aside from being the same number in the Illinois stipulated agreement and approximately 75% compliance, how was this number determined? Why do the Applicants feel this level of compliance is appropriate?***

Joint Applicants explain that the number of measurements was established based on a determination by SBC/Ameritech as to which measurements could be implemented in an expedited manner. Joint Applicants further state that these measurements are those that directly impact the end-user customer and include the measurements previously recommended by the DOJ. Joint Applicants further promised to make every attempt to provide more measurements, where feasible, in an expedited manner.

e) ***On p. 34 of Exhibit 6 under commitment 6, why have the Applicants proposed a payment of $20 million? Aside from being the same payment in the Illinois stipulated agreement, how was this number determined? Why do the Applicants feel this payment is appropriate? Have the Applicants alternatively considered the posting of a "performance bond" or some other form of enforcement mechanism to be used in the event of non-compliance with this or any other commitment?***

Joint Applicants state that the figure of $20 million was a negotiated sum in Ohio after a long process of "give and take" reflecting the input of various parties to that negotiation, including consumer groups and certain CLECs. It was intended to create an appropriate penalty to ensure Joint Applicants' compliance or, in the alternative, adequate remedies to both CLECs and the State if Joint Applicants could not meet their commitments. Joint Applicants note that the Ohio Commission agreed with that assessment in approving the number and the Stipulation. Joint Applicants further explain that the figure has now been increased to $30 million in Illinois to reflect the sizing calculation (based upon access lines) performed by Ameritech witness David Gebhardt in his Direct Testimony on Reopening.

Staff's Position

Staff took no position on question 11(a), which was essentially mooted later by the release of the FCC staff's proposed conditions.

As for question 11(b), Staff believes that the proposed performance remedy plan provides an opportunity for CLECs to obtain liquidated damages on those occasions when Joint Applicants fail to provide adequate service. Just as the recommended performance measures will have to undergo a collaborative process and possible arbitration, Staff envisions this proposed performance plan undergoing a similar collaborative process. Staff believes this performance plan is viable as long as the Commission is deemed the final arbitrator of any disputes connected to the plan. Staff further recommends that the Commission seek assurances from Joint Applicants that the plan will be an ongoing performance assurance program contained in interconnection agreements and not be subject to arbitrary termination at the discretion of Joint Applicants.

With regard to question 11(d), Staff concludes that Joint Applicants have responded adequately. Staff also notes that Joint Applicants' claims of complexities faced in integrating their two respective systems must be given due consideration, and that Joint Applicants are best informed regarding how expeditiously such integration can take place.

With regard to question 11(e), Staff states that while the $30 million commitment

for Illinois appears legitimate on its face, it reflects the fact that Joint Applicants are reporting their performance on only 79 of the Texas performance measures. In other words, Staff believes that this penalty amount does not guarantee that Joint Applicants are performing at any particular level of parity. Staff therefore is more interested in the interconnection non-performance damages and assessments described in response to question 11(b). With a total cap of $120 million and specific standards and benchmarks to be developed collaboratively or through Commission arbitration, Staff contends that this mechanism provides for a more effective ongoing method of ascertaining parity levels of service to CLECs.

AT&T's Position

AT&T witness Gillan testified that the Joint Applicants have failed to propose an enforcement process that can be expected to reduce litigation, speed entry or otherwise streamline the process. Mr. Gillan contended that the so-called interconnection commitments by the Joint Applicants are virtually worthless as a means to reduce litigation and speed entry. He noted that the problem that these commitments should address is the delay and cost of the arbitration process; the solution proposed by the Joint Applicants, however, is essentially the same arbitration process, with its attendant cost and delay. Id. at 37.

Mr. Gillan observed that the Joint Applicants have fundamentally agreed only to "talk about" creating an automated enforcement mechanism that relies on liquidated damages tied to specific performance measures and benchmarks in future collaborative workshops and hearings. He noted that although preferable to refusing to "talk about it," there has been no real change in either the manner, or the incentives, of the discussion that is likely to occur. Id. at 38.

Mr. Gillan asserted that the principal barrier to local competition has been a recalcitrant ILEC. After the merger, the fundamental circumstance that will change is that the ILEC will be larger, Illinois will be proportionally smaller (to the combined entity), and the true headquarters more distant. Against this backdrop, Mr. Gillan opined that a "commitment" to "talk about a commitment" is of limited value, at best, and it stands in stark contrast to what the Commission has requested. Id. at 38.

Mr. Gillan stated that it is useful to remember that the Commission is reviewing this merger because SBC prefers to adopt the role of incumbent rather than compete as an entrant. He noted that SBC could have come to Illinois with the commercial incentive to tear down Ameritech's entry barriers. Instead, Mr. Gillan testified, because SBC would rather become the incumbent, the Commission's only hope with the merger would be to use regulatory tools and meaningful conditions to try and achieve the same result. Id. at 38.

Mr. Gillan testified that the Commission should view with great skepticism (and attribute little real usefulness to) the enforcement mechanisms that the Joint Applicants

have offered. He asserted that either the conditions to be enforced themselves have little substance (how, for example, do you enforce a commitment as heavily caveated as the Joint Applicants' interconnection commitments?), or the Joint Applicants' commitment is only to create an enforcement mechanism in the future. Id. at 38-39.

As an example, Mr. Gillan noted the inherent problems associated with how the Commission would "enforce" the Joint Applicants' commitments to implement "shared transport" with a goal of meaningful competition. He pointed out that the fundamental reason CLECs seek shared transport is to be able to offer broad-scale, mass-market services using the UNE-Platform. As explained by AT&T witness Turner, implementing shared transport in the timeframes now agreed to by the Joint Applicants will have very little real impact in the market. Mr. Gillan explained that this is because the OSS needed to process and provision commercial volumes of orders will not be in place until much later. Id. at 39.

Mr. Gillan pointed out that the central goal of an enforcement mechanism should be to make sure that market conditions change from what they are, to what they can be. While the Joint Applicants have proposed a specific commitment and timetable for shared transport, he noted that they ~~they~~ have made no similar commitment to the underlying OSS that would make the shared transport "concession" significant. Consequently, Mr. Gillan pointed out that there is no enforcement mechanism to achieve the intent of shared transport, because there is no real timetable and commitment to make the shared transport commitment competitively significant. Id. at 39-40.

Mr. Gillan observed that in the absence of incident-based, liquidated damages, the Commission should not expect any less need for regulatory intervention in the future. Mr. Gillan testified that the unfortunate fact is that many of the Joint Applicants' commitments are little more than promises to do what they are legally obligated to do, tied to enforcement mechanisms that are already available: arbitrations, complaints, litigation, etc. Mr. Gillan asserted that the favored enforcement mechanism in the Joint Applicants' proposal remains the status quo. Id. at 40.

Mr. Gillan recounted the old political saying that half a loaf is better than none. The same, however, cannot be said for scissors – a half a scissors simply will not get the job done. Mr. Gillan termed the Joint Applicants' approach to enforcement a "half-a-scissors solution." Shared transport is offered under defined timelines -- but the OSS to make it commercially meaningful are not. Joint Applicants commit to implementing specific performance measures -- but only measures that they choose, and agree only "to talk about" the benchmarks and penalties that will make the measures relevant. Joint Applicants' promise they will extend to Illinois interconnection provisions from other states to avoid unnecessary arbitrations – but the commitment is so laden with restrictions/limitations that arbitrations are all but inevitable. Absent is the full pair of scissors – i.e., a matched commitment and enforcement mechanism that will automatically improve competitive results.

More specifically, AT&T contends that Joint Applicants' commitments regarding implementing 79 of the 122 agreed to Texas performance measures and benchmarks and the Texas liquidated damage plan concerning those standards/benchmarks are appallingly vague. AT&T points out that Joint Applicants failed to list 43 of the 79 performance measures and benchmarks they will implement in Illinois within 300 days. AT&T asserts that Joint Applicants' ambiguity in this regard is suspect since their testimony discusses at length the criteria they used for choosing the specific number 79. Yet, they repeatedly claimed that they could not name them, other than to say that 36 of the 79 measures/benchmarks will include those agreed to at the FCC. SBC/Ameritech Ex. 10.0 at 7; Tr. 2278-80. Joint Applicants are silent on the identity of the remaining 43. Again, AT&T notes that Joint Applicants have carefully couched their "commitment" in a manner that makes it impossible for the Commission, or Illinois CLECs, to know what it actually is. And again, Joint Applicants have given themselves plausible deniability in regard to what they have, or have not, committed to in Illinois.

Moreover, AT&T contends that Joint Applicants have failed to make any firm commitment to implement any performance measures/benchmarks beyond the 79. Joint Applicants have specifically committed to implementing only those Texas measures/benchmarks (beyond the 79) that SBC/Ameritech believe are "technically and economically" feasible in Illinois. SBC/Ameritech Ex. 10.0, at 3-7. True to form, SBC/Ameritech have conveniently failed to conduct any analysis regarding which of the 122 Texas measurements/benchmarks are technically and economically feasible in Illinois. Tr. 2313-14. Any assessment of technical or economic feasibility would be left to SBC, with a disputing CLEC's only remedy an open-ended arbitration. Tr. 2315-16. In reality, therefore, Joint Applicants have not committed to implementing even one of the Texas measurements/benchmarks beyond the presently undefined 79.

Further, AT&T contends that the existence of a federal performance parity plan that only requires implementation of 36 of the 122 Texas measurements/benchmarks raises the possibility that Joint Applicants will attempt to use that national plan as an excuse (perhaps couched in terms of "technical or economic" infeasibility) for not implementing additional measurements/benchmarks in Illinois beyond the 79. AT&T points out that the Joint Applicants have already begun to apply that pressure on other states. Ameritech Michigan has asked the Michigan Public Service Commission ("MPSC") to reconsider its order requiring performance measurements and to defer application of any requirements that "conflict with the performance measurements adopted, or to be adopted," in this proceeding based on its representation that the MPSC's measurements would require Ameritech "to devote significant resources to implementing processes that would not survive FCC action." Ameritech Michigan's Petition for Rehearing or Clarification, MPSC Case No. U-11654, U-11830, at 5-6 (Mich. PSC June 28, 1999). AT&T notes that Ameritech's excuse for noncompliance in Michigan sounds dangerously similar to an argument that the existence of the FCC plans makes implementation of the Michigan plan economically infeasible. Ameritech's filing, coupled with Joint Applicants' well-caveated commitments, raise the likelihood

that Joint Applicants will attempt to misuse the Proposed FCC Conditions to substantiate a claim that it is "technically or economically" infeasible to implement any standard/benchmarks beyond the 79 in Illinois.

AT&T notes that Joint Applicants have also failed to give any indication concerning how long they will make these performance measures/benchmarks and liquidated damages available to Illinois CLECs. AT&T pointed out that SBC witness Mr. Dysart indicated that those terms would be available for three years, but beyond that he stated on cross examination that "a lot of things could happen." Tr. (Dysart), at 2278, 2308-2309. Presumably, indicating that if a CLEC wished to keep those terms and conditions in future interconnection agreements, the CLEC would be forced to negotiate and/or arbitrate with SBC/Ameritech. Tr. (Dysert), at 2278, 2308-09. Moreover, AT&T observed that this is especially troublesome since performance measurements/benchmarks with automatic liquidated damages will become all the more important if Joint Applicants obtain 271 relief during this three-year period.

AT&T asserts that beyond than their vagueness, Joint Applicants' commitments regarding performance measures and liquidated damages are otherwise flawed. AT&T provided a brief summary of those flaws, which it believes must be addressed prior to their approval by this Commission in this docket or in a follow-up collaborative. In fact, AT&T asserts that the enormity of these flaws raise the likelihood that the collaboratives will result in protracted arbitration.

AT&T points out that all that this Commission knows for sure is that Joint Applicants have committed to making available the 36 performance measures/benchmarks that they have agreed to make available at the FCC. This Commission still does not know what other 43 performance benchmarks/measures Joint Applicants will make available in Illinois. Because of Joint Applicants' caveat of "technical or economic" feasibility, the Commission has no assurance that Joint Applicants will provide more than 79 of those 122 Texas performance measures/benchmarks. While the Joint Applicants have committed to making the Texas liquidated damages plan available in Illinois, they have failed to indicate how long Illinois CLECs could take advantage of this offer. And, as noted, that plan has numerous flaws that must be fixed in the collaborative process. AT&T contends that Joint Applicants' paper promises in regard to performance measures and liquidated damages are, once again, couched with caveats, ambiguities and shortcomings that make Joint Applicants' purported "promises" nothing more than a promise of future arbitration to the detriment of Illinois consumers.

Sprint's Position

If the Commission determines that the merger is approved but imposes conditions under Section 7-204 (f), the Commission must ensure that the conditions are satisfied pre-merger. Failure to impose pre-merger approval satisfaction of conditions will be fatal to the development of competition in Illinois. Sprint witness Morris testified,

"Because Joint Applicants are not proposing to satisfy the conditions before the merger is consummated, there are significant questions in my mind whether they will ever be implemented." (Sprint Ex. 4.0, p. 5)

Sprint contends that without knowing which specific performance measure will be implemented in Illinois, Joint Applicants' commitment is too undefined to be meaningful. Sprint supports the LCUG 7.0 document for the implementation of performance measurements. Sprint agrees that implementation of all 122 of the Texas measurements meets the business implications of LCUG 7.0. The Illinois performance measurements plan proposed by Joint Applicants does not ensure parity and does not meet the business implications of LCUG 7.0. The plan is incomplete for several reasons. Joint Applicants only commit to 79 of the 122 Texas measurements. Thus, assuredly many customer affecting measurements from Texas will not be implemented in Illinois. Next, the plan does not improve the status quo, since performance measurements can be incorporated in interconnection agreements today and disputes can be arbitrated. Finally, the three year sunset provision for all of Joint Applicants' commitments may work to remove any progress made on implementing performance measurements in Illinois.

Instead, Sprint contends that at least 60 days prior to closing, either all 122 Texas measurements should be implemented and available in Illinois as a pre-merger condition or the most current performance measures applicable to SBC in California should be implemented. Sprint contends that measurement standards, which include benchmarks, retail analogs and surrogate retail analogs, should be based upon actual Ameritech Illinois support provided to its retail operations or retail analogs, and that in the absence of directly comparative Ameritech Illinois results, standard levels of performance should be established based upon performance studies. Sprint believes that this will ensure performance levels necessary to give CLECs a meaningful opportunity to compete.

21st Century's Position

21st Century Telecom listed a variety of areas where it believes Ameritech Illinois is not providing service to it at parity with the service it provides to itself, and generally contends that the proposed performance measures and penalties are inadequate to remedy these problems. Ms. Smoot testified about alleged problems regarding Out-of-Service trouble reports, address validation for new orders, ability to re-use spare loops when a customer elects not to port his number, delayed collocation commitment dates at the Franklin Street central office, a recent failure of Ameritech Illinois' signal control point, and delays in "make ready" requests for poles.

Covad's Position

Covad recommends that Joint Applicants be required to post a $300 million performance bond, payable to CLECs (with interest going to fund Commission enforcement efforts and/or to the public-interest funds discussed below), for violations of the interconnection and unbundling requirements of TA96. In addition, Covad

proposed that the following condition should be included in the final order to address the provision of unbundled loops, including payment of special construction charges:

> Applicants shall not impose special construction charges for the provision of unbundled loops unless: (1) it can be shown that the costs to be recovered through such special construction charges are not already being recovered through the TELRIC UNE pricing for the loop, and; (2) Applicants would charge their end use customer the same special construction charges if Applicants provided the same service to that end use customer.

Also, Covad proposed that the following condition should be included in the final order to address SBC-Ameritech's provision of loop information to carriers purchasing unbundled loops:

> Applicants should provide CLECs 24 hour on-line access to a computer database which contains information concerning the technical make-up of loops on its system, including physical medium of the loop (i.e., cooper or fiber); loop length in equivalent

26 gauge; the length and location of bridged taps; and the presence of load coils, repeaters, DLC systems or DAMLs.

McLeod's Position

McLeod asserts that Ameritech Illinois is paying reciprocal compensation on Internet-bound traffic only if the terminating company has been a successful Complainant on this issue. Thus, as a merger condition, McLeod proposes that SBC/Ameritech be required to pay reciprocal compensation to all CLECs on calls terminating to the Internet, unless the FCC determines that a different compensation mechanism is appropriate. McLeod also asserts that special construction charges are being unreasonable assessed to CLECs, wherein Ameritech Illinois does not charge its own users to provide the same loop at the same location to the same user. Coincidentally, Ameritech Illinois should be required to reverse its policy and allow CLECs access to it databases, which includes information about the existence of copper facilities the presence and types of digital loop carrier deployed, and the deployment of equipment such as load coils, taps and repeaters, as a condition of merger approval. McLeod also requests that the Commission ensure volume discounts continue to be offered and that wholesale (resellers) be treated fairly.

Joint Applicants' Response

Joint Applicants respond to AT&T by noting that there are numerous enforcement mechanisms in place today that give meaning to their commitments, and that AT&T has not proposed any additions or alternatives to those mechanisms. With regard to 21st Century's allegations, Joint Applicants contend that such specific operational issues have no real relevance here and that, in any event, Mr. Appenzeller refuted each of the allegations. As for Sprint, Joint Applicants state that they do have to bring all 122 Texas measures to Illinois, but that doing so immediately is not possible. They add that all measurement will be adopted to ensure parity within Illinois. Joint Applicants view Covad's suggestion of a performance-bond requirement as unnecessary, excessive, and punitive, in that there are already enforcement mechanisms under state and federal law and because performance bonds are typically for an entity that lacks the financial wherewithal to guarantee the financial aspects of its performance – which is not the situation with SBC or Ameritech.

Commission Analysis and Conclusion

The Commission concludes that all of the business implications of LCUG 7.0 must be satisfied **pre-merger** approval to ensure parity treatment for CLECs in Illinois and to overcome the anticompetitive effects of the merger. Thus, the Commission adopts the following language:

At least 60 days prior to closing, each ILEC must be in compliance with all reporting, measuring and other requirements set forth in the most current performance measures applicable to SBC in California, as set forth in the Joint Partial Settlement Agreement.

In the alternative 60 days prior to closing, Joint Applicants must implement in Illinois all 122 of the performance measurements incorporated into the Texas Proposed Interconnection Agreement. Illinois specific standards for each measure and a penalty structure must also be completed 60 days prior to closing.~~We conclude that Joint Applicants' commitment to import to Illinois the "Texas plan" for performance measures and incident-based liquidated damages provisions is responsive to our question and adequately addresses our concerns. It also represents a procompetitive benefit to Illinois CLECs and end-users which would not exist without the merger. Our goal is to ensure that any conditions imposed in this Order are not illusory, but rather are specific and enforceable, and that enforcement measures are adequate to ensure full compliance with the conditions. The Texas plan and related commitments achieve these goals. In addition, we note that the FCC likely will impose performance and liquidated-damages condition of its own which, if they exceed the damages available under the Texas plan, would also be available to CLECs in Illinois to the extent of any overage. Thus, Illinois CLECs will have the best of both worlds. With the proper incentives in place, we can be reasonably assured that the conditions we impose will be fulfilled and that CLECs and end-users will reap the benefits. Joint Applicants' commitments create such incentives.~~

ENFORCEMENT: ENFORCEMENT MECHANISMS

12. *Reasonable and effective enforcement mechanisms for any condition imposed, including appropriate penalties, economic or otherwise.*

Joint Applicants' Position

Joint Applicants state that they are prepared to implement a rigorous and comprehensive Compliance Program to verify and enforce the commitments they have made in reopening:

Enforcement Commitments

a. Joint Applicants would appoint a corporate officer to oversee implementation of, and compliance with, these commitments; to monitor Joint Applicants' progress toward meeting the deadlines specified herein; to provide periodic reports regarding Joint Applicants' compliance as required; and to ensure that any payments due under these commitments are timely made. The audit committee of SBC/Ameritech's Board of Directors would oversee the corporate compliance officer's fulfillment of these responsibilities.

b. No later than 6 months after the merger closing, and annually thereafter until the expiration of each of these commitments, Joint Applicants would file with the Commission, for

the public record, a report detailing its compliance with these commitments. Joint Applicants would make a copy of its most current compliance report publicly available on their Internet site.

c. Joint Applicants would, at their own expense, annually engage independent auditors to verify SBC/Ameritech's compliance with these commitments. The first compliance review would be due 1 year after the merger closing and annual compliance reviews for a period of 3 years after the merger closing would be submitted. The independent auditor would have access to all of Joint Applicants' records, accounts, memoranda, and documentation necessary to evaluate Joint Applicants' compliance with these commitments. The independent auditor also may verify Joint Applicants' compliance through contacts with the ICC, the FCC, or Joint Applicants' wholesale customers, as appropriate. The Commission would have access to the working papers and supporting materials of the independent auditor. The independent auditor's review would be filed with the Commission for the public record. The review would address: the accuracy of the compliance report submitted by Joint Applicants during the period covered by the review and Joint Applicants' compliance with each of the commitments during the period covered by the review, to the extent that compliance is not addressed by Joint Applicants' compliance report. As filed with the Commission, the review report would include: (i) findings and exceptions of the independent auditor; (ii) the response of Joint Applicants to any exceptions of the independent auditor; and (iii) the reply of the independent auditor to the company's response.

d. Joint Applicants would agree that if the Commission makes a determination, after due process, that Joint Applicants have during the effective period of a commitment materially failed to comply with that commitment, the Commission may, at its discretion, extend the effective period of that commitment for a period that does not exceed the period during which Joint Applicants materially failed to comply with the commitment.

e. Joint Applicants would make payments due under these commitments within 10 business days of a determination by Joint Applicants' compliance officer, the Commission, or an arbitrator, that payment is due.

f. The specific enforcement mechanisms that would be established under these commitments would not abrogate, supersede, limit, or otherwise replace the Commission's

enforcement powers under State law. Nor would the payments for non-performance specifically required by these commitments, to which Joint Applicants would voluntarily agree, be subject to statutory limitations on the size or type of awards that may be assessed by the Commission.

f) ***For any and all proposed commitments made by the Applicants throughout their June 10, 1999 filing, what are the specific enforcement mechanisms which would be used by the Commission in the event of non-compliance with such commitments?***

Joint Applicants state that they have attempted to address the specific enforcement mechanisms appropriate to specific commitments throughout their testimony. In addition to the stated mechanisms, Joint Applicants note that the Commission retains its full authority over Joint Applicants to investigate and/or conduct hearings on any complaints of non-compliance. And in addition to its statutory enforcement mechanisms, the Post Exceptions Proposed Order identified an additional enforcement mechanism to ensure Joint Applicants full compliance with the commitments they have made in this docket, *i.e.*, an increase in the savings allocation flowed through to Illinois ratepayers.

Staff's Position

Staff concludes that Joint Applicants have been responsive to this question. However, Staff noted a possible inconsistency in the responses to questions 11 and 12 regarding the timelines for implementing the 79 performance measurements and for finishing the OSS integration process. (McClerren DOR, Staff Ex. 8.0 at 17-18).

As for question 12(f), Staff agrees with SBC's Mr. Kahan (SBC/Am. Ex. 1.3 at 23-25) that appointment of a corporate compliance officer would be a step in the right direction, but avers that such an appointment should by no means be the sole enforcement remedy available to the Commission. Staff notes that the PUA provides the Commission with the underlying legal authority to use certain enforcement mechanisms in the event of non-compliance with any commitments made by Joint Applicants, and that the Commission will retain all such authority post-merger.

Commission Analysis and Conclusion

Our conclusion here incorporates the ~~follows from our~~ conclusion ~~regarding~~from question 11.~~ Joint Applicants have committed to appropriate compliance mechanisms for failure to meet conditions and their specific commitments on reopening. These mechanisms include all of the Commission's usual statutory enforcement tools, along with arbitration or other procedures where appropriate. Perhaps more important, Joint Applicants have agreed to various collaborative processes with Staff and CLECs, which should help identify and resolve (or at least narrow) disputes before formal litigation. For example, the proposal that Staff create a report describing which non-Illinois contractual terms and conditions should be available in Illinois should ease resolution of disputes in that area. As with question 11, then, Joint Applicants' commitment with respect to question 12 represents a procompetitive benefit to CLECs and end-users in Illinois that would not exist absent the merger.~~

ENFORCEMENT: PERFORMANCE REPORTS

13. ***The manner, necessary actions and timetable by which Joint Applicants would create detailed performance monitoring reports to compare the provision of the following services to CLECs with internal performance standards: network performance, Operations Support Systems (OSS) and customer (i.e. CLEC) service.***

Joint Applicants' Position

Joint Applicants refer to their responses to questions number 4 and 11 above.

> **g)** ***On p. 36 of Exhibit 6 under commitment 10, the Applicants describe a report to the Commission Staff regarding transactions "affecting Illinois CLECs relative to their provision of service to end users in Illinois." It is unclear whether or not this report is intended to be responsive to Item 13 of the original Attachment A. If commitment 10 is the Applicants response to Item 13 from Attachment A, does this report meet the expressed goal of comparing service received by CLECs from the Applicants to service received by the Applicants as they provision it to themselves? What is the form of such reports as proposed by the Applicants? Please clarify. Additionally, how is the Commission to determine the "economic or technical" feasibility of these reports as discussed by the Applicants? Do the Applicants propose to determine this? If so, what remedy does the Commission have available if a CLEC demonstrates otherwise to the Commission in a formal proceeding?***

Joint Applicants state that Ameritech Illinois already provides to requesting CLECs reports that compare the service received by CLECs to the service provided by Ameritech Illinois to its retail end users where comparable tasks or functions are involved. These reports also compare Ameritech Illinois' performance in providing services to a particular CLEC with Ameritech Illinois' performance in providing the same services to all CLECs in the aggregate. Post-merger, Ameritech Illinois would continue to provide similar reports. However, Joint Applicants explain, those reports would be revised to reflect the additional performance measures Joint Applicants have committed to if the merger is approved and consummated. Joint Applicants did not intend to imply that the comparison would involve any aspect of CLEC service provision to their end user customers. With that clarification, Joint Applicants believe it is clear that their commitment is responsive to both items 11 and 13 of Attachment A to the June 4 letter.

Joint Applicants also explain that, after merger consummation, they will formulate a team of experts, which will have as its goal the implementation of all

committed Standards/ Benchmarks. This team will also determine what, if any Standards/Benchmarks are economically or technically infeasible to implement given the network architecture and systems (including billing and ordering) of Ameritech Illinois. Such a determination will be made available and discussed with participants in the collaborative process discussed above. Joint Applicants have every expectation that any infeasibility determination will be understood and acceptable to collaborative participants, as was SBC's experience in a similar collaborative process in Texas.

Joint Applicants further state that if during the collaborative process any participant challenges an infeasibility conclusion by Joint Applicants and can demonstrate that the infeasibility conclusion was incorrect, Joint Applicants would reverse their conclusion and work to implement the Standard/Benchmark. If there are unresolved disputes between Joint Applicants and collaborative participants on the feasibility issue, these disputes would be resolved in one or more of the Section 252 arbitrations of an interconnection agreement by the Commission. In the event that an infeasibility issue has not been submitted in a Section 252 arbitration at the time a dispute arises, Joint Applicants agree to have the issue decided by a third party arbitrator. Joint Applicants propose that the costs of the arbitrator be shared by Joint Applicants and the collaborative participants disputing the infeasibility claim. Based upon SBC's experiences in Texas and California, Joint Applicants expect there will be discussions and differences of opinion, but on the issue of infeasibility, participants in the collaborative will usually be convinced that one side or the other is correct and be able to move on to other issues.

Staff's Position

Staff does not cite any specific concern with Joint Applicants' response to this question, but emphasizes to the Commission that it does not favor forcing collaborative participants to pay for an arbitrator, as the cost may be prohibitive to smaller CLECs. Rather, Staff believes that the Commission should arbitrate disputes arising from the collaborative process.

Sprint's Position

Sprint incorporates its position from question 11 here.~~argues that Joint Applicants' commitment to implement 79 of the 122 Texas performance measures in inadequate. Sprint contends that all 122 measures should be implemented as a "pre-merger" condition because all 122 are purportedly necessary to promote competition, and that, even if that does not occur, Joint Applicants should be required to specifically identify which 79 measurements will be implemented and to do so in far less than 300 days, which Sprint views as too lengthy a time period.~~

Nextlink's Position

Nextlink maintains that the Joint Applicants' commitments are insufficient and very vague. Nextlink states that it is unclear which of the standards will be offered in the initial 79 of the 122 that are proposed by SBC/Ameritech.

Nextlink maintains that the Commission should require SBC/Ameritech to implement in Illinois each and every Texas performance measurement, standard/benchmark and remedy, or a reasonable alternative if not technically feasible, within a date certain or face substantial financial penalties. Instead of a "collaborative process" in Illinois, Nextlink submits that SBC/Ameritech's implementation of these performance measurements, standards/benchmarks and remedies should be reviewed as a part of a compliance proceeding in which the Commission can develop a full record regarding technical feasibility if necessary and enforce the liquidated damages remedies to which SBC/Ameritech has committed if a Texas performance measurement and benchmark is adopted, as well as additional remedies if necessary.

Nextlink also maintains that SBC/Ameritech has made no commitment regarding what is to happen if an OSS performance measure, standard or benchmark is not technically feasible in Illinois, and states that it is not acceptable that once the determination of technical infeasibility is made, that the OSS and facilities performance measure is then not implemented. Rather, and as a part of its recommended Commission compliance proceeding, in the event the Commission determines that a performance measure or standard/benchmark is not technically feasible, Nextlink states that SBC/Ameritech should be required to make such OSS and facilities performance measure technically feasible within a Commission prescribed period of time or pay Commission prescribed penalties unless SBC/Ameritech has implemented a reasonable alternative which has been approved by the Commission. Nextlink further states that the Commission should require independent, third party testing of the SBC/Ameritech OSS system.

Joint Applicants' Response

In response to parties that questioned why Joint Applicants have not specified which 79 performance measures will be imported from Texas, Mr. Dysart explained that SBC's limited knowledge of Ameritech Illinois's systems and processes limited its ability to specify benchmarks, but that SBC and Ameritech had agreed that at least 79 of the Texas performance measures would imported to Illinois with no questions of technical feasibility. This is the same approach adopted by the Ohio Commission, over the same type of assertions being made by CLECs here. Mr. Dysart added that Joint Applicants fully intend to implement as many of the Texas measurements as possible, hopefully all, and they would convene a joint task force to evaluate that issue within 60 days of the merger closing. This task force would identify any differences in Joint Applicants' legacy systems or processes that could make a measurement technically or economically infeasible in Illinois. Mr. Dysart added that performance measures that

are found to be feasible would be provided on a rolling basis beginning 120 days after merger closing, which allows time both for the task force to evaluate the measurements and for the collaborative process with Staff and CLECs.

Regarding Mr. McClerren's concerns about a discrepancy between the timetables for OSS implementation and implementation of performance standards, Mr. Dysart stated that those are totally independent work efforts.

As for remedies for failure to meet performance standards, Joint Applicants state that the performance remedy plan agreed to in Texas will be made available to CLECs in Illinois through interconnection agreements, and that a $90 million cap on damages would apply, based on the number of access lines in Illinois as compared to Texas (which has a $120 million cap).

Commission Analysis and Conclusion

We incorporate our conclusion from question 11 here. ~~We conclude that Joint Applicants' commitment to implement at least 79 of the 122 Texas performance measures within 300 days of the merger closing is responsive to our concerns, represents a substantial improvement over the status quo in Illinois, and will have procompetitive benefits for CLECs and end-users in Illinois that would not exist absent the merger. The procedures to implement this commitment are reasonably quick, given the complexity of the task, and Joint Applicants have agreed that the 79 measures is a floor and that they intend to adopt most or all of the remaining Texas measures as well. While parties can always argue for more measures, there is no guarantee that every measure is helpful to competition, as opposed to just being a burden for the incumbent LEC. As a result, we believe that the implementation of 79 benchmarks is a good starting point, and again rely on the collaborative processes for the parties to determine which measures are necessary and feasible.~~

IV. Additional Commitments by Joint Applicants

In response to questions and concerns raised by the Chairman's various letters, Joint Applicants proffered the additional commitments described below. SBC states that its ability to make these commitments is based on the premise that no other material conditions will be imposed that would have the effect of reducing the resources necessary for SBC and Ameritech to meet these commitments. For example, if the Commission were to condition the merger on an increase in the PEPO's flow-through of merger savings, the additional commitments listed here may no longer apply because the Commission would be taking away the resources that would otherwise be available to meet those commitments.

A. Illinois Headquarters Commitment. For not less than 5 years following the Merger Closing Date, SBC/Ameritech agree to maintain Ameritech Corporation headquarters and an Ameritech

Illinois state headquarters in Illinois that is staffed sufficiently to at least maintain Ameritech Illinois' current local presence with government entities and community organizations.

B. Ameritech Illinois Employee Commitment. SBC/Ameritech agree that, at the end of 2 years following the Merger Closing Date, the number of full-time equivalent employees of Ameritech Illinois will be more than the greater of 1) the number of such employees as of the date the Commission enters a final appealable order approving the Merger, or 2) the number of such employees as of the Merger Closing Date.

C. Consumer Education Fund Commitment. SBC/Ameritech will establish, within 3 months after the Merger Closing Date, a Consumer Education Fund ("CEF") and will make $1 million available to the CEF for disbursement by Ameritech Illinois in each of the three consecutive 12-month periods following the date the CEF is established, for a total of $3 million. All allocated funds will remain available to the CEF for the purposes described herein until they are disbursed. Funds shall be allocated to the CEF by Ameritech Illinois, and the use of the funds will be controlled by the CEF Committee. The Committee shall consist of one voting representative each from Ameritech Illinois, Commission Staff, and such other entities as appointed by the Commission, and shall make decisions by majority vote. Tie votes, if any, will be decided by the Commission Staff representative. CEF Committee decisions as to how funds should be distributed and expended are subject to Commission review. At its first meeting, the Committee shall establish rules of governance for the operation of the Committee. No funds shall be disbursed until 30 days after the committee files with the Commission a report of such proposed expenditures

D. Community Technology Fund Commitment. SBC/Ameritech will establish, within 3 months of the Merger Closing Date, a Community Technology Fund ("CTF") and will make $1 million available to the CTF for disbursement by Ameritech Illinois in each of the three consecutive 12-month periods following the date the CTF is established, for a total of $3 million. All allocated funds will remain available to the CTF for the purposes described herein until they are disbursed. Funds shall be allocated to the CTF by Ameritech Illinois, and the use of the funds will be controlled by the CTF Committee. The Committee shall consist of one voting representative each from Ameritech Illinois, Commission Staff, and such other entities appointed by the

Commission, and shall make decisions by majority vote. Ties votes, if any, will be decided by the Commission Staff representative. CTF Committee decisions as to how funds should be distributed and expended are subject to Commission review as described below. At its first meeting, the Committee shall establish rules of governance for the operation of the Committee. Additional volunteer committee members, with full voting rights (except the right to choose additional members), can be selected by unanimous agreement of Ameritech Illinois, Commission Staff and other members. Except for program design and implementation expenses not to exceed $50,000 annually as set forth below, no funds shall be disbursed until 30 days after the committee files with the Commission a report of such proposed expenditures. The CTF shall be dedicated to uses which help assure that rural and low income areas in Illinois have access to advanced telecommunications technology. Such uses may include expenditures for computer equipment and associated software, Ameritech tariffed services, Internet access, technical support, program design and implementation expenses not to exceed $50,000 annually (which amount shall be disbursed to the CTF upon its request, with all expenditures to be reported annually to the Commission), and other associated services and equipment in rural and low income communities. The Commission Staff shall work closely with the CTF committee in implementing this fund and to establish criteria and standards to be used in awarding funds to ensure that it is not administered in a way which has an anti-competitive effect.

SBC/Ameritech will also provide funding of $750,000 in the first year following the Merger Closing, and $350,000 per year for two additional years thereafter, to support a Community Computer Center.

E. Charitable Contributions Commitment. SBC/Ameritech will make philanthropic and community contributions in Illinois in the aggregate of more than $4 million in each of the three consecutive 12 month periods following the Merger Closing Date. Illinois-based employees of SBC/Ameritech will continue to have input regarding the beneficiaries of these contributions.

F. ADSL Deployment. SBC/Ameritech commit that in the event ADSL service is offered as a service to residence customers in any Ameritech Illinois central office, then ADSL service will be offered to residence customers in any other

> Ameritech Illinois central office where ADSL is subsequently deployed. SBC/Ameritech intend that any deployment of ADSL in Illinois will be done in good faith in a non-discriminatory fashion without excluding any particular area of the Ameritech Illinois service area.

Staff's Position

Staff witnesses Jackson and Marshall testified regarding Joint Applicants' additional Illinois-specific commitments. Ms. Marshall noted that commitments A., B., E., and F. did not, in her opinion, effect any change to the status quo prior to reopening, and therefore did not create any "increased benefit" to consumers. With regard to the CEF and CTF, Ms. Marshall stated that it would be inappropriate and discriminatory to force ratepayers to bear the costs of such special interest funds. She therefore recommended that none of the costs of these funds be netted against merger savings, in which case she would have no objection to establishing the funds.

Ms. Jackson took no position on the CEF and CTF commitments, though she believed that they are a step in the right direction to establish that the merger will benefit Illinois consumers. She did, however, ask a number of clarifying questions of Joint Applicants. With regard to the CEF, for example, she expressed a concern that the fund not be used as a marketing tool and also asked Joint Applicants to explain the Commission's role in reviewing expenditures and providing input on the type of educational materials distributed to the public. She also asked whether Joint Applicants would use an independent third party to design the materials and marketing plan for the CEF. With regard to the CTF, Ms. Jackson asked for clarification of the Commission's role in reviewing how funds are distributed or deciding the type of equipment to be used. She also sought more detail on how the CTF would help rural and low-income areas. She similarly asked for more detail on the operation of the Community Computer Center.

DSSA's Position

DSSA and Neighborhood Learning Networks presented testimony on the CEF and CTF and other issues. DSSA witness Samuelson stated that the CTF should have four major initiatives: educating various "disadvantaged" markets regarding the benefits of the Internet and other advanced telecommunications services; funding public technology initiatives; funding community technology centers; and creating Illinois subsidiaries to implement the National-Local Strategy, to develop advanced telecommunications services, and to commercialize public technology initiatives. Mr. Samuelson stated that some of these initiatives could be modeled on existing initiatives at the national level. Mr. Samuelson further stated that, properly funded, the CEF proposed by Joint Applicants is an excellent start.

Joint Applicants' Response

Responding to Staff witness Jackson's desire for more detail about the operation of the CEF and CTF, Joint Applicants explain that their commitments are based on approved commitments in Ohio and establishes a framework to answer her questions. They further state that they would have no objection to the Commission more clearly delineating the role it envisions for itself and Staff in this area, but that they did not want to presume to dictate those matters.

With regard to DSSA's testimony, Joint Applicants again explain the extent of their commitments, which they believe will help disadvantaged and underserved markets. They add that they have tried to make commitments that provide flexibility in the use of the public-interest funds, and that actual disbursement and operations issues should be determined outside this docket. As for DSSA's request to locate certain subsidiaries in Illinois, Joint Applicants state that their commitment to maintain employment levels and the location of Ameritech headquarters addresses any concerns about a possible loss of jobs. The other subsidiaries DSSA refers to are either already established elsewhere or at a stage where it would be premature to determine a specific location, though Illinois remains a candidate.

Commission Analysis and Conclusion

The additional Illinois-specific commitments proposed by Joint Applicants were not necessary as a response to the questions in the June 4, June 15, and July 9 letters. To the extent these commitments exceed those agreed to earlier in this proceeding, then, they are "icing on the cake." We therefore adopt the commitments, which we believe represent a significant benefit to Illinois that would not exist absent the merger, but have no reason to specifically rule on their details, which in any event will need to be worked out over time.

V. Proposed FCC Conditions and the July 9 Letter

Joint Applicants' Position

Joint Applicants take the position that the proceedings at the FCC and in Illinois are distinct and separate and that it is not appropriate to litigate FCC issues in this case. They further note that the proposed FCC conditions are not yet final, and may well be modified or rejected by the FCC itself. Nevertheless, Joint Applicants attached a copy of the proposed FCC conditions to Mr. Kahan's Rebuttal Testimony on Reopening, and cross-examination on those conditions was allowed per the Chairman's direction.

Mr. Kahan and the other witnesses for Joint Applicants emphasized that the proposed FCC conditions and the proposed Illinois commitments are complementary and that nothing proposed to the FCC takes away from any of the Illinois commitments.

In fact, if the FCC adopts the proposed conditions, they will be effective in Illinois, subject to this Commission's jurisdiction. In other words, any conditions imposed in this proceeding would apply first, after which parties could refer to the FCC conditions for any additional, incremental requirements. There also may be instances where the proposed FCC conditions impose a requirement that has no counterpart in the Illinois conditions, thereby providing an additional benefit to Illinois.

Joint Applicants explain that even though the proposed FCC conditions would apply in Illinois if adopted by the FCC, there is no need for this Commission to adopt such conditions. Significantly, however, Joint Applicants do not object to the Commission taking the substantive provisions of the FCC proposals (Sections I-VI, VIII-IX, XI-XV, XVII-XX, and XXIV) and incorporating them into the Commission's Order, provided that the conditions are not modified in any material way other than to make them Illinois-specific and ensure that Joint Applicants would not be subject to duplicative payments or damages under the FCC and Illinois requirements. Joint Applicants added that their respective boards of directors would, of course, have to make a final evaluation of any package of conditions imposed by the Commission.

Questions in July 9 Letter Regarding FCC Commitments

1) ***In Section I of SBC/Ameritech's July 1 FCC Ex Parte filing, SBC/Ameritech have committed to the FCC to implement a "Federal Performance Parity Plan" ("FCC performance plan") upon consummation of the transaction. If the FCC were to adopt the voluntary commitments of SBC/Ameritech, how would the FCC performance plan affect the commitments reflected in SBC/Ameritech's testimony on re-opening to implement certain OSS and facilities performance measurements ("Illinois plan")? If the FCC were to adopt the voluntary commitments of SBC/Ameritech, what overlap, if any, would there be in terms of benchmarks, liquidated damages payments, and compliance oversight between the Illinois and FCC performance plans? Also, please explain why the proposed FCC performance plan would extend for three years, while the Illinois plan as proposed extends for only 300 days.***

Joint Applicants' Response

Joint Applicants explain that the FCC performance plan most closely mirrors the liquidated damage remedy plan included as part of the commitments made to Illinois in Mr. Dysart's testimony and, most particularly, in Attachment 2 to Mr. Dysart's Direct Testimony on Reopening. That Attachment is based on a program of liquidated damages that has been offered in Texas and that SBC has committed to implement in all new interconnection agreements in Illinois and in any existing interconnection agreements upon the request by the CLEC.

Under the FCC performance plan as it impacts the Illinois commitments, payments would be made under the Illinois commitments, assuming the Illinois Commission includes them as proposed in its final Order. Thus, for CLECs operating in Illinois, payments would first be made to the CLECs under the Illinois plan up to the Illinois cap, and then be made to CLECs under the FCC performance plan up to the Tier 1 federal cap if it exceeds the Illinois cap. If the state plan requires assessments to the state -- as the Illinois commitment would -- then, similarly, payments would be made to a public interest fund designated by the State of Illinois under the state plan up to the Illinois cap, and then to the federal public interest fund up to the Tier 2 federal cap to the extent that it exceeds the Illinois cap. (Based on Mr. Dysart's Rebuttal Testimony on Re-Opening, the Illinois cap would be approximately $90 million, based on the relative number of access lines in Texas (approximately 9.8 million) and in Illinois (approximately 6.5 million)). Were Illinois to forego the state assessments, then payments would be made to the federal public interest fund under Tier 2 of the federal plan, assuming SBC is not providing parity or benchmark performance for three months in a row or more than six months in any calendar year. Finally (although this does not directly impact Illinois), if SBC is not providing parity or benchmark performance for three months in a row or more than six months in any calendar year, it must pay into the federal public interest fund under Tier 3 of the FCC performance plan in any event.

In short, in each instance, CLECs would pursue any remedies available to them under Illinois-ordered conditions to the full extent of those remedies. If the remedies available to a CLEC in Illinois are less than what the CLEC would be entitled to in Illinois as a result of the FCC conditions, the CLEC would be entitled to pursue its FCC remedy for any overage.

Joint Applicants also assert that if the FCC adopted SBC/Ameritech's proposal as submitted and this Commission adopted Joint Applicants' commitments, there would be a great deal of overlap in the substance of the federal and state benchmarks. The twenty federal benchmarks are designed to capture the most critical, customer-impacting elements of the 122 Texas benchmarks. If Illinois ultimately adopts most or all of the 122 benchmarks (subject to technical feasibility issues and consistent with the terms and conditions of Joint Applicants' commitment), it will be adopting the substance of the 20 federal benchmarks. Alternatively, if Illinois were simply to adopt the 20 federal benchmarks, of course, the overlap would be exact.

Joint Applicants contend that a comparison of the proposed FCC performance plan's three-year timeline and the Illinois 300 day timeline is not really appropriate. The three-year period referenced in the FCC proposal is a period of time beginning nine months after closing during which the FCC performance plan will be in force. The 300 days in Joint Applicants' Illinois commitments is the period of time during which Ameritech Illinois will implement at least 79 of the 122 benchmarks.

Joint Applicants believe that it would be more appropriate to compare the 300 days after closing that Joint Applicants have proposed for coming into substantial

compliance with the benchmarks in Illinois with the nine months (approximately 270 days) that SBC/Ameritech have to come into substantial compliance with the FCC performance plan. Similarly, while the three-year clock begins to run for the FCC performance plan only after nine months, the three-year timeline for the Illinois commitments begins at closing. In essence, the Illinois Commitment will begin one month later and end nine months earlier than the federal proposal. However, Joint Applicants explain that during both the first one month and last nine months, CLECs will have full access to the FCC proposal and remedies.

2) ***In Attachment A to SBC/Ameritech's July 1 FCC Ex Parte filing, SBC/Ameritech commit to provide the FCC and CLECs with certain forms of performance measurement results, on a quarterly basis, cataloging SBC/Ameritech's provision of service to the aggregate of all CLECs in each of SBC/Ameritech's states. If the FCC were to adopt the voluntary commitments of SBC/Ameritech, would the Illinois Commerce Commission have equal access to this data? If not, why not?***

Joint Applicants' Response

Joint Applicants' answer is Yes. As explained in Paragraph 1 of Attachment A to the July 1, 1999 *Ex Parte* letter filed by SBC and Ameritech with the FCC:

> SBC/Ameritech shall provide the Commission with performance measurement results, on a quarterly basis, demonstrating SBC/Ameritech's monthly performance provided to the aggregate of all CLECs in each of SBC/Ameritech's 13 states. SBC/Ameritech shall also provide the Commission with access to SBC/Ameritech's Internet website, where the Commission can obtain performance measurement results demonstrating SBC/Ameritech's monthly performance provided to the aggregate of all CLECs. SBC/Ameritech shall provide the CLECs with access to SBC/Ameritech's Internet website, where each CLEC can obtain performance measurements demonstrating SBC/Ameritech's monthly performance provided to it on an individual basis, and to the aggregate of all CLECs.

Joint Applicants would make this same data available to this Commission by providing this Commission with access to the same Internet website.

3) ***In Section III of SBC/Ameritech's July 1 FCC Ex Parte filing, SBC/Ameritech have committed to the FCC to implement an OSS Process Improvement Plan (the "FCC OSS plan"). This 3 phase FCC OSS plan seems to closely mirror the commitments reflected in SBC/Ameritech's testimony on re-opening. Further, the FCC OSS***

plan calls for a "single workshop" to work collaboratively with CLECs under the ultimate direction of the Chief of the Common Carrier Bureau of the FCC. If the FCC were to adopt the voluntary commitments of SBC/Ameritech, how would the FCC OSS plan overlap with the proposal put forth here in Illinois? If the FCC were to adopt the voluntary commitments of SBC/Ameritech, do SBC/Ameritech envision that the FCC OSS plan is controlling over Illinois or takes the place of the commitments reflected in their testimony on re-opening? Please explain.

Joint Applicants' Response

Joint Applicants state that if the FCC proposal is not adopted, the commitment made for an Illinois collaborative process will remain in place and will control.

Joint Applicants further state that if the FCC adopts SBC/Ameritech's proposals as submitted and the Commission adopts Joint Applicants' commitments, there would be overlap between the collaborative processes pursued by the FCC and by the Commission. The most important difference is that the FCC OSS process is targeted at creating uniform standards for the entire SBC/Ameritech 13-state region for the application-to-application interfaces, graphic user interfaces, and common business rules for pre-ordering, ordering, provisioning, maintenance and billing issues to be discussed in the collaborative process.

While Joint Applicants do not believe that the FCC OSS process is controlling over Illinois, Joint Applicants believe that, once an FCC Order and an ICC Order are in place, it would make sense to consult among the FCC Commission Staff, the ICC Commission Staff and affected CLECs to determine the most efficient way to proceed with each collaborative process. To the extent that collaborative issues overlap between the FCC and ICC collaborative processes, Joint Applicants believe it will be more efficient for all parties involved to pursue an issue only at the FCC level and thereby ensure not only the development of acceptable standards, but also uniform standards across the entire SBC/Ameritech region. For example, one goal of the FCC OSS process is the development of uniform business rules so that a CLEC can administer its OSS relationships consistently across the SBC/Ameritech region. Joint Applicants believe that development of state-specific rules would be counterproductive to the FCC's goal.

4) ***In Section VIII of SBC/Ameritech's July 1 FCC Ex Parte filing, SBC/Ameritech have committed to implementing shared transport in current Ameritech states. Is this proposal to the FCC the same as the commitments reflected in SBC/Ameritech's testimony on re-opening regarding shared transport? Please explain.***

Joint Applicants' Response

The Joint Applicants' answer is that the two commitments are the same, except for a minor difference in timing. Specifically, the shared transport commitment as proposed to the FCC calls for the offering of the interim shared transport product no later than the time of the merger closing, while the shared transport commitment in Illinois calls for the offering of that product within 30 days of the merger closing. If the FCC proposal is adopted by the FCC, the same timetable would apply in Illinois.

Additionally, Joint Applicants have made no commitment in Illinois to provide the UNE platform to customers. However, at the FCC, SBC/Ameritech have proposed to make the UNE platform available to residential customers within 30 days after the merger closing subject to certain term and volume limits. If that proposal is adopted by the FCC, it would apply in Illinois.

5) ***In Section XXV of SBC/Ameritech's July 1 FCC Ex Parte filing, SBC/Ameritech have stated that if conditions imposed in connection with the merger under state law grant "similar rights" against SBC/Ameritech to the conditions volunteered to the FCC, affected parties shall not have a right to invoke overlapping aspects of federal and state conditions. If the FCC were to adopt the voluntary commitments of SBC/Ameritech, please explain the legal and practical implications of this statement as they relate to the commitments reflected in SBC/Ameritech's testimony on re-opening.***

Joint Applicants' Response

Joint Applicants respond by referring to Paragraph 69 of the Proposed FCC conditions, which states as follows:

> The Commission recognizes that various offerings and initiatives required by these Conditions, including but not limited to the carrier-to-carrier promotions, OSS requirements, and performance monitoring conditions, may substantially duplicate requirements imposed in connection with the merger under state law. These Conditions shall supplement, but shall not be cumulative of, substantially related conditions imposed under state law. Where both these Conditions and conditions imposed in connection with the merger under state law grant parties similar rights against SBC/Ameritech, affected parties shall not have a right to invoke the relevant terms of these Conditions in a given state if they have invoked a substantially related condition imposed on the merger under state law. For example, carriers requesting unbundled local loops for residential service under promotional terms offered pursuant to state approval of the merger would not also be able to

> invoke the promotional discounts on unbundled loops required by these Conditions. Furthermore, any unbundled local loops provided by SBC/Ameritech for residential service under a substantially similar merger-related PUC imposed promotion in a given state would be deducted from the number of unbundled local loops required to be provided in that State under Paragraph 49 of these Conditions. This Section shall not limit the Commission's powers to enforce these Conditions or the reporting requirements of SBC/Ameritech under these Conditions.

By this answer, Joint Applicants state that they intend simply to ensure that the commitments that they have made to states like Illinois are complementary to and not cumulative of conditions that have been proposed to the FCC. In other words, if the Illinois Commission were to adopt an FCC condition as offered in Mr. Kahan's Rebuttal Testimony on Re-Opening (the unbundled loop discounts is an example), what the Illinois Commission ordered would be counted as part of and not in addition to the FCC condition.

The FCC conditions do not supplant this Commission's powers in any way. Throughout the conditions, state authority is preserved. *See, e.g.*, Conditions ¶ 24 (loop conditioning pricing); ¶ 29 (advanced services approvals); ¶ 44 (pricing); ¶ 60 (Lifeline plans); ¶ 69 (duplication of state conditions); Attach. A ¶2 (performance monitoring). The Conditions are intended to support and supplement actions taken by this Commission. They do not and could not affect the jurisdictional balance between this Commission and the FCC. Paragraph 69, as it is currently written, reflects the principle that if this Commission imposes merger conditions, Illinois should get the benefit of any provision in the FCC Conditions that, in the opinion of this Commission, is more favorable, but that the FCC and the Illinois conditions, and the remedies therein contained, should not be duplicative.

Commission Analysis and Conclusion

We find that there are many conflicts between the FCC commitments and the ICC commitments made by Joint Applicants. These conflicts serve to confuse matters. For example, there are proposed FCC collaborative processes related to OSS improvements that are not proposed in Illinois. If the FCC conditions are not approved or altered, then there will be no commitment in Illinois to improve advanced services OSS or develop a change management process. There are differing enforcement procedures as well for the FCC commitments than the ICC commitments. At the FCC, disputes go to the common carrier bureau of the FCC and then to arbitration; at the ICC disputes go to an independent third party arbitrator or the Commission. Illinois interconnection commitments A and D have FCC counterparts, but these too contain differences from the ICC commitments. Joint Applicants try to smooth over these conflicts and others by assuring us that Illinois will get whichever commitment is best. (Tr. 1870). We do not take comfort in this assurance. Instead we believe that the

multitude of commitments, accompanying exceptions, collaborative processes, and enforcement procedures in different forums will be used by Joint Applicants to further thwart competition here. These multiple processes and efforts serve to raise the hurdles for competitors rather than lower them. Adoption of the conditions set forth herein rather than Joint Applicants' proposed conditions will remedy the problems identified above. ~~While we recognize the Joint Applicants' willingness to abide by the substantive provisions of their proposed FCC commitments in Illinois, we do not find it necessary to impose such requirements as conditions of this Order. There is no guarantee that the FCC will adopt all of the conditions as proposed. We will simply take note of the FCC conditions and Joint Applicants' assurance that those conditions, if adopted, will apply in Illinois and will be treated as incremental to the Illinois conditions.~~

VI. Conditions to Approval of the Reorganization

J. Conditions To the Approval of the Proposed Reorganization.

Based upon the evidence in this reopening phase, the Commission concludes that the proposed SBC/Ameritech merger fails to comply with the requirements of Section 7-204(b)(6) because it will have a significant adverse effect on competition in the Illinois local exchange market. The Commission finds, however, that the imposition of the following list of conditions will serve to reduce the adverse effects enough to meet the relevant statutory standard. We note that these conditions must be accomplished pre-merger approval (or significant progress must be made as detailed in the specific language of the conditions) in order for Joint Applicants to have sufficient incentive to comply with the conditions. In addition, there is no specific sunset period for these conditions. The conditions must be available until such time that the Joint Applicants make a showing to the Commission that the conditions are no longer necessary:

~~The record in this cause, together with our analyses in other sections of this Order, reveals that conditions to our approval need to be imposed in order to protect the interests of the Company and its customers.~~

~~Many of these conditions are the result of commitments made by the Joint Applicants in the course of this proceeding. While certain of these might be beyond our jurisdiction to impose, we have accepted and relied to some degree on these commitments. Some of the other conditions arise from our reasoned judgment on how to make the Section 7-204(b) findings truly meaningful. Another condition is based on our belief that compliance with outstanding Commission Orders is so basic an interest that it can and should be addressed as part of this Order. There is also a condition which, while recognizing the limits of our authority in this proceeding, takes note of the evidence and requires the Joint Applicants to respond to the issue in the docket where we have jurisdiction. Finally, some of the many conditions here proposed have not been adopted primarily for the reason that they either relate to matters beyond our jurisdiction or lie outside the scope of this proceeding.~~

~~The record contains assurances that not only will the reorganization not diminish the Company's ability to provide service but that it will enable AI to improve the quality of service it provides. The record also contains assurances that the proposed reorganization is not likely to have a significant adverse effect on competition in those markets over which the Commission has jurisdiction, but that it will enhance and promote local exchange competition. We will hold the Joint Applicants to those assurances, and in doing so, we require the Joint Applicants to comply with all of the conditions set forth herein. Except where other termination dates are specifically established, all conditions set out below shall cease to be effective and shall no longer be binding in any respect three years after the Merger Closing Date. Merger Closing Date means the day on which, pursuant to their Merger Agreement, SBC and Ameritech cause a Certificate of Merger to be executed, acknowledged and filed with~~

~~the Secretary of State of Delaware as provided in Section 251 of the Delaware General Corporation Law, as amended.~~

Conditions:

(1) Headquarters - For not less than five years following the Merger Closing Date, SBC/Ameritech will maintain Ameritech Corporation headquarters and an Ameritech Illinois state headquarters in Illinois staffed sufficiently to maintain Ameritech Illinois' current local presence with government entities and community organizations;

(2) Name - SBC will continue to use the Ameritech name in each state of the Ameritech region;

(3) Charitable Contributions - SBC/Ameritech will continue Ameritech Illinois' historic levels of charitable contributions and community activities and will continue to support economic development and education consistent with AI's established commitments. More specifically, SBC/Ameritech will make philanthropic and community contributions in Illinois in the aggregate of more than $4,000,000 in each of the three consecutive 12-month periods following the Merger Closing Date;

(4) Development - SBC will continue to support the economic development and education in Ameritech's regions consistent with Ameritech Illinois' well established commitments in these areas.

(5) Employment - SBC will ensure that, as a result of the proposed reorganization, employment levels in Ameritech's regions will not be reduced due to this transaction;

(6) Ameritech Illinois' Employee Commitment - At the end of two years following the Merger Closing Date, the number of full-time equivalent employees of Ameritech Illinois will be more than the greater of 1) the number of such employees as of the date the Commission enters a final appealable order approving the Merger, or 2) the number of such employees as of the Merger Closing Date;

(7) Investment - SBC will continue to invest the capital necessary to support AI's network consistent with Ameritech's past practices, and complete its five year infrastructure network modernization program of $3 billion as previously required of AI in our Alternative Regulation Plan Order. Further, AI will identify for each reported investment which of its services and products benefit from the investments and will also identify the area in which the investment is made;

(8) Consumer Education Fund - SBC/Ameritech will establish, within three months after the Merger Closing Date, a Consumer Education Fund ("CEF") and will make $1 million available to the CEF for disbursement by Ameritech Illinois in each of the three consecutive 12-month periods following the date the CEF is established, for a total of $3 million. All allocated funds remain available to the CEF for the purposes described herein until they are disbursed. Funds shall be allocated to the CEF by Ameritech Illinois, and the use of the funds will be controlled by the CEF Committee. The Committee shall consist of one voting representative each from Ameritech Illinois, Commission Staff, and such other entities as appointed by the Commission and shall make decisions by majority vote. Tie votes, if any, will be decided by the Commission Staff representative. CEF Committee decisions as to how funds should be distributed and expended are subject to Commission review. At its first meeting, the Committee shall

establish rules of governance for the operation of the Committee. No funds shall be disbursed until 30 days after the committee files with the Commission a report of such proposed expenditures;

(9) Community Technology Fund - SBC/Ameritech will establish, within three months of the Merger Closing Date, a Community Technology Fund ("CTF") and will make $1 million available to the CTF for disbursement by Ameritech Illinois in each of the three consecutive 12-month periods following the date the CTF is established, for a total of $3 million. All allocated funds remain available to the CTF for the purposes described herein until they are disbursed. Funds shall be allocated to the CTF by Ameritech Illinois, and the use of the funds will be controlled by the CTF Committee. The Committee shall consist of one voting representative each from Ameritech Illinois, Commission Staff, and other entities appointed by the Commission and shall make decisions by majority vote. Tie votes, if any, will be decided by the Commission Staff representative. CTF Committee decisions as to how funds should be distributed and expended are subject to Commission review as described below. At its first meeting, the Committee shall establish rules of governance for the operation of the Committee. Additional volunteer committee members, with full voting rights (except the right to choose additional members), can be selected by unanimous agreement of Ameritech Illinois, Commission Staff and other members. Except for program design and implementation expenses not to exceed $50,000 annually as set forth below, no funds shall be disbursed until 30 days after the committee files with the Commission a report of such proposed expenditures. The CTF shall be dedicated to uses which help assure that rural and low income areas in Illinois have access to advanced telecommunications technology. Such uses may include expenditures for computer equipment and associated software, Ameritech tariffed services, Internet access, technical support, program design and implementation expenses not to exceed $50,000 annually (which amount shall be disbursed to the CTF upon its request, with all expenditures to be reported annually to the Commission), and other associated services and equipment in rural and low income communities. The Commission Staff shall work closely with the CTF committee in implementing this fund and to establish criteria and standards to be used in awarding funds to ensure that it is not administered in a way which has an anti-competitive effect;

(10) Community Computer Center - In conjunction with the Community Technology Fund, SBC/Ameritech will also provide funding of $750,000 in the first year following the Merger Closing, and $350,000 per year for two additional years thereafter, to support a Community Computer Center;

(11) OSS Reports - AI will submit monthly OSS performance results to Staff for UNEs, resale and OSS (*see also* condition No. 32 below);

(12) LRSIC & TELRIC - ~~AI will file revised LRSIC, TELRIC and shared and common cost studies within six months after the last regulatory approval of the proposed reorganization. It is noted that Staff is willing to work with AI to establish a priorities list for such updates. The Commission will utilize the updated studies in its analysis of the Company's request for rate rebalancing and in the two TELRIC investigations;~~

(13) Cellular Notification - The Joint Applicants will provide the requisite notice to affected cellular customers regarding the pending merger and sale of the cellular property in compliance with Staff's recommendation. They also should afford the purchaser the opportunity to participate in the specifics of such notice;

(14) 9-1-1 Service - The Commission requires that, if the post-merged company combines the two 9-1-1 operations and organizations, AI must seek Commission approval of the plan and establish that the 9-1-1 changes will be transparent and not impact the integrity of Illinois 9-1-1 system. Additionally, AI must seek Commission approval for the removal of any AI 9-1-1 Staff and establish that any remaining 9-1-1 Staff will have executive management authority.

(15) Access to Books and Records - The Joint Applicants agree that Staff will have access to all books and records of SBC and Ameritech Corporation and their utility and non-utility parent, sister and subsidiary companies, as well as independent auditors' workpapers on the same terms as those set forth in the Commission's Orders approving the reorganization of Consolidated Communications in the Order in Docket 97-0300 (dated September 24, 1997) and the Gallatin River exchanges of Sprint Communications in the Order in Docket 97-0321 (dated October 21, 1998);

(16) CAM -

(a) Revisions - The Joint Applicants agree that Ameritech Illinois will file revisions to Cost Allocation Manuals ("CAM") within sixty (60) days of the date of receipt of the last regulatory approval required for the proposed merger;

(b) AIA - The Joint Applicants will provide Staff with a copy of each affiliate service agreement and the relevant updated CAM pages to resolve any cost allocation issues in a complete and timely manner;

(c) Updates - The Joint Applicants will continue to provide Staff with any and all relevant updates to the CAM before providing service under any new or revised affiliate agreements;

(d) Personal Training - Applicants agree to inform all relevant company personnel that the CAM has been revised, provide easy access to the revised manual and train personnel as to its proper application;

(17) TRI - The Joint Applicants agree to use Technology Resources, Inc. ("TRI") to work on accessibility issues for people with disabilities in Illinois.

(18) Universal Design - The Joint Applicants agree to implement SBC's Universal Design Policy in Illinois for people with various disabilities to provide input on telecommunications accessibility, service, features and design. We require Annual Reports on the details of enforcement;

(19) "Best Practices" Report - The Joint Applicants agree that AI will provide, for a period of up to three years after the Merger Closing Date, an Annual Report in which it identifies any proposed "best practices" whose adoption by SBC or its affiliates would affect the provisioning of intrastate telecommunications in Illinois.

(20) ADSL Deployment - In the event ADSL service is offered as a service to residence customers in any Ameritech Illinois Central Office, then ADSL service will be offered to residence customers in any other Ameritech Illinois Central Office where ADSL is subsequently deployed. Any deployment by Joint Applicants of ADSL in Illinois will be done in good faith in a non-discriminatory fashion without excluding any particular area of the Ameritech Illinois service area; Access to UNEs necessary for ADSL deployment must comply with condition 22 below, section 251.

(21) National-Local Subsidiary - Joint Applicants will not seek local exchange certification for their National-Local Subsidiary in Illinois prior to January 1, 2003;

(22) Section 251 - Each ILEC shall provide unrestricted availability of combinations of such UNEs, including shared transport and the UNE-Platform or UNE-P without any non-cost-based non-recurring charges, sunset period (other than as stated herein), 'glue' charge, or geographic restrictions, consistent with 47 C.F.R. § 51.315, AT&T Corp. v. Iowa Utilities Board and other applicable law. As used herein, the UNE-Platform or UNE-P means access to the combination of UNEs necessary to provide a telecommunications service at the total element long-run economic cost (TELRIC) of such UNEs.

In any central office where the ILEC (or any of its regulated or unregulated affiliates) has begun to offer xDSL services, then for all loops served by that central office, the ILEC shall make available the xDSL network elements (including all DSL functionalities such as DSLAMs) on a combined basis as a UNE-Platform. This obligation is in addition to and independent of the obligation of the ILEC to make individual UNEs available or its obligation to make its xDSL

retail services available at a wholesale discount.

~~Joint Applicants will meet with Staff within 30 days of the Merger Closing Date to address any current issues Staff may have regarding Section 251. In addition, Joint Applicants shall meet with Staff on a quarterly basis to address any Section 251 concerns that may arise over time;~~

(23) OSS - We require Joint Applicants to correct the OSS-24 hours performance as hereinafter set forth.

While a non-compliance penalty structure was outlined in the Plan and has been enforced continuously, obviously, this punitive measure has not provided a sufficient incentive for AI to cure the problem.

We are in agreement with Staff that re-litigating the issue of proper penalties as they relate to OOS>24, would constitute an unnecessary drain on the Commission's time and resources. As a result, Staff's proposed penalty should

be increased by amending the Alt. Reg. Formula "Q" component a set forth in Staff's Initial Brief at 106; (as outlined in its Initial Brief at 105-108) will be adopted *in toto*.

(24) Rate Cap - Residential and other basic services will be capped at current rates through to July 1, 2002. AI may, however, propose increases or decreases, as necessary, subject to Commission review and approval;

(25) Equality of Customer Services - The Joint Applicants have agreed to work with Staff to fashion a commitment reflecting the provision of equal types of service for all customer groups. We require that this cooperative effort begin within 150 days of the final regulatory approval and that we be apprised of the end result of this effort;

(26) Regulatory Staff - AI will maintain a level of regulatory staff reasonably necessary to ensure compliance with all of our Orders;

(27) Enforcement and Compliance Monitoring.

Joint Applicants shall appoint and identify to this Commission a corporate officer to oversee implementation of, and compliance with, these commitments; to monitor Joint Applicants' progress toward meeting the deadlines specified herein; to provide periodic reports regarding Joint Applicants' compliance as required; and to ensure that any payments due under these commitments are timely made. The compliance officer will report directly to the audit committee of SBC/Ameritech's Board of Directors, who will oversee the corporate compliance officer's fulfillment of these responsibilities.

No later than 6 months after the merger closing, and annually thereafter until the expiration of each of these commitments, Joint Applicants will file with the Commission, for the public record, a report detailing its compliance with these commitments. Joint Applicants will make a copy of its most current compliance report publicly available on their Internet site.

Joint Applicants will, at their own expense, annually engage independent auditors to verify SBC/Ameritech's compliance with these commitments. The first compliance review will be due 1 year after the merger closing and compliance reviews covering a period of 3 years after the merger closing will be submitted. The independent auditor will have access to all of Joint Applicants' records, accounts, memoranda, and documentation necessary to evaluate Joint Applicants' compliance with these commitments. The independent auditor also may verify Joint Applicants' compliance through contacts with the ICC, the FCC, or Joint Applicants' wholesale customers, as appropriate. The Commission will have access to the working papers and supporting materials of the independent auditor. The independent auditor's review will be filed with the Commission for

the public record. The review will address: the accuracy of the compliance report submitted by Joint Applicants during the period covered by the review and Joint Applicants' compliance with each of the commitments during the period covered by the review, to the extent that compliance is not addressed by Joint Applicants' compliance report. As filed with the Commission, the review will include: (i) findings and exceptions of the independent auditor; (ii) the response of Joint Applicants to any exceptions of the independent auditor; and (iii) the reply of the independent auditor to the company's response.

If the Commission makes a determination, after due process, that Joint Applicants have during the effective period of a condition materially failed to comply with that condition, the Commission may, at its discretion, extend the effective period of that condition for a period that does not exceed the period during which Joint Applicants materially failed to comply with the condition.

Joint Applicants will make payments due under these commitments within 10 business days of a determination by Joint Applicants' compliance officer, the Commission, or an arbitrator, that payment is due.

These specific enforcement mechanisms will not abrogate, supersede, limit, or otherwise replace the Commission's enforcement powers under State law.

(28) Recordation of All Savings and Costs - The Joint Applicants will be held responsible for recording all savings and all costs relating to the merger in the manner described herein with the ultimate result that 50% of the net merger savings be allocated to consumers as previously set forth in this Order. We note that his measure puts the burden on the Joint Applicants to affirmatively evidence compliance in all particulars thus conserving Staff's time and resources.

(29) Interconnection - Ameritech Illinois will provide interconnection in accordance with the following interconnection commitments:

Each ILEC (defined as each operating company of the merging parties) shall make available to any requesting CLEC any term or condition that it (or any of its LEC affiliates) is obligated to provide to a CLEC under an existing interconnection agreement, arbitration decision or other state ruling throughout the SBC and Ameritech region. Such term or condition shall be treated as if it were a term or condition subject to Section 252(i) obligations, shall be made available within 30 days of the request, and thereafter subject to regulatory approvals, as necessary, pursuant to Sections 251 and 252 of the Act.

~~**Interconnection Condition A**~~

~~**A.** Ameritech Illinois shall provide to CLECs in Illinois those services,~~

~~facilities or interconnection agreements/arrangements offered by SBC in its in-region states subject to the following exceptions and conditions:~~

~~Ameritech Illinois shall be required to offer to CLECs in Illinois UNEs, services, facilities or interconnection agreements/arrangements which have been imposed upon SBC by another state as a result of an arbitration (as opposed to a voluntary agreement);~~

- Ameritech Illinois shall be required to offer to CLECs in Illinois UNEs, services, facilities or interconnection agreements/arrangements, unless it demonstrates by a preponderance of the evidence that they are technically infeasible or unlawful or contrary to state policy;

- Ameritech Illinois may request a waiver of any provision of an agreement/arrangement or arbitration;

- Ameritech Illinois shall not be required to offer to CLECs in Illinois UNEs, services, facilities or interconnection agreements/arrangements at the same rates or prices as SBC makes such offerings in SBC in-region territories since costs may and do vary by state, and pricing in each state reflects state pricing policies and costs;

- This condition does not waive or affect Joint Applicants' right to seek modifications to interconnection agreements which incorporate services, facilities, or interconnection arrangements if changes in applicable law or state or federal requirements alter the requirements for such UNEs, services, facilities, or interconnection agreements/arrangements.

The Commission finds this condition to be valuable to CLECs and the expansion of the competitive market in Illinois, particularly since Section 252(i) of TA 96 does not contemplate automatic adoption of one state's approval of an interconnection agreement in other states. This is especially so where Ameritech Illinois is not a "party" to interconnection agreements in other SBC states. In addition, the Commission also finds that excluding from the automatic requirements of this condition interconnection arrangements that are imposed upon SBC by arbitration retains for this Commission its ability to review Illinois interconnection agreements from an Illinois perspective, rather than adopting the policies of other states.

In relation to these interconnection commitments, Joint Applicants shall make available the following optional payment plan for non-recurring charges:

> As an incentive for local residential telephone competition, Ameritech Illinois will offer a promotional 18-month installment payment option to CLECs for the payment of non-recurring charges associated with the purchase of unbundled network elements used in the provision of residential services and the resale of services used in the provision of residential services. This promotional 18-month installment option will begin on the date 30 days following the Commission's entry of

a final appealable order approving the Merger and will terminate 3 years following the Merger Closing Date. No interest will be assessed on the remaining balance during the 18-month period as long as the CLEC continues to purchase the residential unbundled network element or residential resold service. In the event the CLEC does not purchase the residential unbundled network element or residential resold service for the entire 18 month payment period, any remaining non-recurring charge balance shall immediately be due and payable when the service is terminated. Unless an interconnection agreement by its terms specifies otherwise, interest at a rate of 8% per annum will be assessed on any amounts that become immediately due and payable and are not paid within 30 days of same. If a CLEC disputes its obligation to make payment when due, it will place the amount due in an escrow account earning a rate of at least 8% interest, pending a final resolution of the dispute.

As an additional incentive for local residential telephone competition, Ameritech Illinois agrees to waive the Bona Fide Request ("BFR") initial processing fee associated with a BFR submitted by a CLEC for service to residential customers under the following condition: the CLEC submitting the BFR must have, for the majority of the BFR requests it has submitted to Ameritech Illinois during the preceding 12 months, completed the BFR process, including the payment of any amounts due. The BFR initial processing fee will be waived for a CLEC's first BFR following the Merger Closing Date and for a CLEC that has not submitted a BFR during the preceding 12 months. This BFR fee waiver will be offered for a period of 3 years following the Merger Closing Date.

While the process for negotiating and incorporating proposed changes to interconnection agreements resulting from Condition A will be dictated by the normal Section 252 negotiation / arbitration process, Ameritech Illinois shall begin reviewing such proposed changes within 30 days of the Merger Closing Date.

Interconnection Conditions B and C

B. No later than 90 days after the Merger Closing Date, Joint Applicants

shall participate in a workshop or collaborative process with Staff and CLECs to compare UNEs, services, facilities or interconnection agreements which SBC has made available to CLECs in SBC's in-region states and which are not currently available and desired by CLECs in Illinois. This workshop shall conclude its work within 60 days.

The Commission Staff shall take a primary role as a facilitator. Within 90 days of the initiation of this workshop, Staff shall produce a report summarizing the interconnection terms and conditions that will be made available and the interconnection arrangements that CLECs desired. Of the arrangements desired by CLECs, Staff will summarize those that Ameritech Illinois agreed to and that Ameritech Illinois objected to. Where Ameritech Illinois raised objections, Staff shall state its position on the merits of Ameritech Illinois' objections.

Condition B and this workshop process are ancillary to Condition A. Should any disagreement arise as to whether an interconnection arrangement requested of Ameritech Illinois is subject to Condition A, the Commission expects that any parties negotiating for interconnection terms under Condition A shall make use of the Staff's report in those negotiations. Therefore, the Commissioners will not take any active role in this process unless and until a Section 252 arbitration is brought before us. The Section 252 arbitration process is the most appropriate and most efficient enforcement mechanism for these commitments since the ultimate goal of these commitments is to make available to CLECs the interconnection arrangements covered by Condition A. The way those arrangements are made available is through interconnection agreements.

C. Joint Applicants shall provide copies of interconnection agreements from other states to the Commission upon request.

This condition will make information available that may be useful to the Commission and its Staff during the collaborative process and/or thereafter to monitor Joint Applicants' continued compliance with the condition of offering agreements from other states in Illinois.

This condition will also make information conveniently available to interested parties, since the Commission intends to use it to establish a repository -- similar to the existing repository of in-state interconnection agreements -- in this State for all of Joint Applicants' interconnection agreements requested so that those agreements are available for review to all CLECs operating in this State, as well as to the public at large.

Again, however, this condition is ancillary to Conditions A and D, where Joint Applicants commit to make certain terms in these agreements

~~available. The ultimate enforcement of this condition C would come through the negotiation process and, where necessary, the Section 252 arbitration process.~~

~~**Interconnection Condition D**~~

~~**D.** If a CLEC affiliate of SBC/Ameritech obtains a UNE or interconnection arrangement from an incumbent LEC through negotiation of that arrangement or through arbitration initiated by the SBC/Ameritech CLEC under 47 U.S.C. § 252, then Ameritech Illinois shall make available to requesting, similarly situated CLECs in Illinois, though good-faith negotiation, the same UNE or interconnection arrangement on the same terms (exclusive of price). Ameritech Illinois shall be obligated to provide such UNE or interconnection arrangement(s) where it is technically feasible to do so on or in the network of Ameritech Illinois and subject to the unbundling limitations of 47 U.S.C. § 251(d)(2).~~

~~The determination of whether a UNE or interconnection arrangement is technically feasible shall follow 47 CFR § 51.5. The determination of whether the requesting CLEC is similarly situated shall include whether the requesting CLEC is seeking to obtain interconnection agreements containing the same volume, term and area of service commitments and the same terms and conditions concerning any relevant issues such as signaling requirements and interconnection arrangements as Joint Applicants' CLEC affiliate's interconnection agreement. If there is a dispute in this regard it will come to the Commission in the form of an arbitration or complaint.~~

~~The price(s) for such UNEs or interconnection arrangements shall be negotiated on a state-specific basis and, if such negotiations do not result in agreement, Ameritech Illinois shall submit the pricing dispute(s), exclusive of the related terms and conditions required to be provided under this Section, to this Commission for resolution under 47 U.S.C. § 252.~~

(30) Shared Transport - Ameritech Illinois will provide shared transport in accordance with the following shared transport commitment:

A. Interim Solution Within 30 Days Of Merger Closing

To accelerate the availability of a shared transport offering, Ameritech Illinois shall deploy a form of shared transport on an interim basis within 30 days of Merger Closing Date. As described below, the interim solution avoids or addresses each of the technical and network issues that Ameritech Illinois identified in its TELRIC tariff filing.

Dedicated links and custom routing. Ameritech Illinois will not require the use of dedicated transport or custom routing to complete a call using unbundled local switching and shared transport to a third party switch. Rather, Ameritech Illinois will make available a modified version of transiting that does not require a dedicated end office integration (EOI) transit trunk. This is similar to the shared transport offering that SBC makes available. For example, as SBC has described its common transport offering: "this common transport is employed typically when the CLEC makes use of SBC's network to send calls to or terminate calls from an IXC, a facility based CLEC and/or an independent local exchange company." (SBC's Response to Staff data requests RTY-6.04R. *See also* Staff Ex. 5.0 at 8).

Measuring terminating call detail. Ameritech Illinois does not have the ability to record terminating detail based on its current network architecture. However, Ameritech Illinois will implement an interim solution that involves the use of originating and terminating factors and a settlement procedure with each CLEC purchasing local switching and shared transport to allocate appropriate access charge revenues. Thus, when an end-user customer, who is served by a CLEC using Ameritech Illinois' shared transport facilities, makes or receives an interLATA call, Ameritech Illinois will collect relevant access charges from the interexchange carrier and then make payment to, or receive payment from, the CLEC using local switching based on the difference between access charges and applicable charges for the UNEs used to provide the access service. Factors and settlement procedures have been widely used within the telecommunication industry in many contexts, for many years. Indeed, such a factor-based approach and settlement method have been informally approved by the United States Department of Justice and the FCC in connection with Ameritech's Section 271 plans.

Identifying the originating local carrier. Ameritech Illinois currently does not have the short-term ability to identify the originating local carrier terminating a call to a CLEC's local switching port. However, Ameritech Illinois will implement a concept known as originating carrier pays to address this limitation. Under an originating carrier pays arrangement, Ameritech Illinois will charge a CLEC using Ameritech Illinois' local switching and shared transport facilities for usage of local switching to both originate and terminate such traffic. Ameritech Illinois, however, will not charge a CLEC using Ameritech Illinois' unbundled local switching for usage at the terminating switch when terminating traffic delivered by shared transport facilities. Nor will Ameritech Illinois create message records for such terminating usage, since reciprocal compensation will not be eligible for collection by the terminating carrier in such circumstances. This approach therefore alleviates the existing network fact that

Ameritech Illinois does not have the capability to record terminating local calls. If the originating carrier pays both originating and terminating ULS, recording at the termination office for a local call is unnecessary in any event. The Commission finds that this is a reasonable interim solution, which accelerates the availability of shared transport in a way that makes it operationally feasible.

Providing common/shared transport on an unbundled basis. The Supreme Court has expressly reinstated the FCC's rule, which required incumbent LECs to provide pre-assembled combinations of unbundled network elements, assuming each element in the combination is capable of being purchased separately. While Ameritech Illinois contends shared transport is not "unbundleable" as defined by the Supreme Court, that issue will be resolved in the FCC's UNE Remand Proceedings. Until such time, Ameritech Illinois will provide shared transport with local switching (since, in fact, there is no other way to provide it).

B. Long-Term Solution Within One Year Of Merger Closing.

The Commission finds the proposed interim solution described above acceptable because: (i) it maximizes Ameritech Illinois' ability to offer shared transport quickly; (ii) it minimizes Y2K implications by avoiding any significant network or billing modifications before the end of 1999; and (iii) it provides a reasonable period of time to implement a more permanent solution that relies on a network technology that does not require the use of factors or settlements.

Despite the apparent confusion in the record regarding shared transport, the major difference between Ameritech Illinois' and SBC's capabilities on this issue relates to the deployment of different network technologies. In Texas, SBC has deployed an AIN network architecture that enables SBC to use AIN triggers to identify UNE ports, which in turn enables billing of usage sensitive charges. This AIN approach eliminates the need for factors or settlements for both local and toll calling. Ameritech Illinois has not deployed this AIN network capability. The cost and time to deploy such capability is significant and substantial. However, Ameritech Illinois shall deploy shared transport in Illinois, in the same manner that SBC has deployed shared transport in the state of Texas (using AIN triggers) beginning its roll out within one year of the Merger Closing Date. Deployment of shared transport in this manner fully complies with this Commission's TELRIC Order and the FCC's now-vacated *Third Order on Reconsideration*. Joint Applicants will offer such shared transport in Illinois, under the terms and conditions (other than rate structure and price) that are substantially similar to the most favorable terms offered by SBC to CLECs in Texas as of the Merger Closing Date. Joint Applicants make no commitment here other than to finally comply with applicable law. The Joint Applicants, however, note that the provision of shared transport could expire based upon the

FCC's ruling in the Rule 51.319 remand. To reduce hurdles to competitors caused by this merger, shared transport should be available to competitors on an unbundled basis regardless of the outcome of the FCC remand proceeding on Rule 51.319.

(31) Additional OSS - Joint Applicants will comply with the following OSS commitments:

1. SBC-Ameritech must demonstrate that each of its ILECs provides uniform OSS interfaces for carriers purchasing interconnection. Such interfaces must be uniform throughout the joint SBC/Ameritech region and must include, where applicable, all industry standards (including OBF guidelines), both GUI and EDI based interfaces where no industry standard applies, and uniformity among all related formats, including data fields and business rules.

2. Each of the ILECs must demonstrate through an independent, third-party test that its OSS interfaces are capable of handling the reasonably expected demands for pre-ordering, ordering, provisioning, billing, repair and maintenance with respect to resold services, unbundled network elements, and combinations of unbundled elements. The testing shall follow the New York PSC independent testing format, as set forth in Case 97-C-0271. Prior to closing, the parties shall submit for the Commission's approval the model contract(s) providing for such testing in accordance with this condition.

3. The Commission recognizes that that the changes necessary to implement uniform OSS, while very much needed, impose significant costs upon CLECs. In light of these costs, the Commission imposes the following additional obligations:

- Current interface versions should be maintained for at least one to two years after all merger considerations have been satisfied.
- SBC must clearly identify all external CLEC business rule impacts to fully disclose to CLECs any potential gaps.
- SBC must outline all categories of products/services order activities, line activities, account activities, pre-order activities, documentation handbooks, and connectivity requirements that will be uniform for all business rules.
- Because the phased implementation approach leads to an unstable environment unless code is restricted, CLECs must have additional assurances in this area. CLECs are at risk of SBC continually imposing or issuing additional requirements from enhancements or dot releases. Therefore, the latest code must be made available for an interim period of time in order to protect current customers.
- SBC should include a statement on specific testing arrangements and criteria established for each testing stage. A merger of a system on paper is not the reality until extensive testing is conducted. CLECs should not have to migrate to any release until thorough testing has been completed and successfully documented.

4. Each ILEC (defined as the operating companies of the merging companies) shall make available to requesting carriers electronic access on a daily basis to a Loop Inventory Database as provided herein. The Loop Inventory Database shall be the exclusive repository of such information within the ILEC (or any affiliate of the ILEC) and any affiliate or division of the ILEC desiring to have access to such information

shall access such information exclusively through the database, on the same terms and conditions as requesting CLECs. Two weeks prior to closing, each ILEC shall demonstrate to the Commission that it has established the Loop Inventory Database, and that it contains all relevant data (as set forth below) in the ILEC's possession (including in the possession of any affiliate of the ILEC), provided that the data contained in the Database shall reflect the inventory of loops connected to central offices serving not less than 50% of that ILEC's exchange access lines. No later than six months after the closing, the database shall reflect an inventory of loops connected to all of the remaining central offices. The database shall permit the real-time retrieval of both location specific loop capability information and aggregate market information. Location specific loop capability shall include: actual loop length (as measured from customer premise to serving central office); the presence of load coils, bridged taps, and repeaters (and how many of each); the presence of any other known interferers; whether the location currently is served by facilities that transit through a digital loop carrier (DLC); the availability of alternate facilities that could circumvent the DLC, i.e., end-to-end copper loop; and any known binder group restrictions that would hinder the placement of a particular xDSL technology. Aggregate market information shall include: average loop length of all loops connected to a specific central office; the percentage of loops that are less than 6,000, 12,000 and 18,000 feet; the percentage of loops currently residing behind a DLC; and the percentage of loops that contain interferers such as load coils, bridged taps, and repeaters.

~~**A. OSS Conditions**~~

~~Joint Applicants will meet the following timetables and milestones regarding integration of OSS processes in Illinois:~~

~~Joint Applicants shall implement a comprehensive plan for improving the OSS systems and interfaces available to CLECs in Illinois. The Joint Applicants' plan, which depends upon the systems, expertise, and resources that, to the extent not already available, will become available to Ameritech Illinois as a result of the merger, consists of the following commitments.~~

~~*Application-to-Application Interfaces Commitments*~~

~~Ameritech Illinois will deploy, within two years after the Merger Closing Date, commercially ready, application-to-application interfaces as defined, adopted, and periodically updated by industry standard setting bodies for OSS (*e.g.*, Electronic Data Interchange ("EDI") and Electronic Bonding Interface ("EBI")) that support pre-ordering, ordering, provisioning, maintenance and repair, and billing for resold services, individual UNEs, and combinations of UNEs. Such interfaces will meet the requirements of 47 U.S.C. § 251(c)(3).~~

~~Deployment of the application-to-application interfaces will be carried out in three phases.~~

- ~~*Phase 1:* Within 5 months after the Merger Closing Date, Joint Applicants will develop a complete plan of record (including assessment of Ameritech Illinois' and SBC's existing OSS interfaces, business processes and rules, hardware capabilities, data network, and security protections).~~

- ~~*Phase 2:* Joint Applicants will seek to obtain collaboratively, within 4 months after completion of Phase 1, agreement with CLECs on OSS interfaces, enhancements, business requirements, and a change management process, including a 12-month forward-looking view of process changes and deployment schedule. In the event Joint Applicants and the CLECs are unable to reach a written agreement within 2 months of the commencement of the collaborative process, any issues in dispute will be resolved through arbitration by an independent third party arbitrator in consultation with subject matter~~

experts from Telcordia Technologies, with the expenses of the arbitration to be shared by Joint Applicants and the CLECs that are parties to the disputed issues.

Phase 3: Within 18 months after the completion of Phase 2, Ameritech Illinois will develop and deploy, on a phased-in basis, system interfaces, enhancements, and business requirements consistent with the agreement or arbitrated result reached in Phase 2. Any dispute between Joint Applicants and a CLEC over whether or not Ameritech Illinois has implemented the agreement or arbitrated result reached in Phase 2 will be resolved through arbitration by an independent third party arbitrator in consultation with subject matter experts from Telcordia Technologies, with the expenses of the arbitration to be shared by Joint Applicants and the CLEC(s) that are parties to the disputed issues.

Graphical User Interfaces

Ameritech Illinois will deploy, within 2 years after the Merger Closing Date, graphical user interfaces (*e.g.*, SBC's Toolbar interface) for OSS that support pre-ordering, ordering, provisioning, maintenance and repair, and billing for resold services, individual UNEs, and combinations of UNEs. Such interfaces will use industry standards as appropriate and will meet the requirements of 47 U.S.C. § 251(c)(3). Deployment of graphical user interfaces will be carried out on the same three-phase schedule as application-to-application interfaces.

Direct Access to Service Order Processing Systems

In addition to the application-to-application and graphical user interfaces described herein, Ameritech Illinois will offer to develop and deploy direct access to Ameritech Illinois' service order processing systems for resold services, individual UNEs, and combinations of UNEs, provided that a CLEC requesting such direct access enters into a contract to pay Ameritech Illinois for the costs of development and deployment. The access developed will meet the requirements of 47 U.S.C. § 251(c)(3). Ameritech Illinois' offer to develop direct access to Ameritech Illinois' service order processing systems will be available for a period of 30 months after the Merger Closing Date, and Ameritech Illinois will agree to develop and deploy the interface contracted for within one year of a completed contract with the CLEC.

~~**B. Additional OSS Commitments**~~

~~To the extent that OSS issues in addition to those identified above are raised in any collaborative process, Joint Applicants shall make such issues part of the appropriate collaborative processes.~~

(32) Performance Measuring, Benchmarks and Liquidated Damages - Joint Applicants will establish performance measurements, benchmarks and provide for liquidated damages in accordance with the performance measurements, benchmarks and liquidated damages commitment set forth below:

At least 60 days prior to closing, AI must be in compliance with all reporting, measuring and other requirements set forth in the most current performance measures applicable to SBC in California, as set forth in the Joint Partial Settlement Agreement. In the alternative 60 days prior to closing, Joint Applicants must implement in Illinois all 122 of the performance measurements incorporated into the Texas Proposed Interconnection Agreement. Illinois specific standards for each measure and a penalty structure must also be completed 60 days prior to closing.

~~**Performance Measures, Benchmarks and Liquidated Damages Commitments**~~

~~1. Within 60 days following the Merger Closing Date, SBC/Ameritech will establish a joint SBC/Ameritech task force comprised of their performance measurements subject matter experts that is to develop a plan to implement OSS and facilities performance measurements, associated standards/benchmarks, and remedies in Illinois.~~

~~2. The task force will review the economic and technical feasibility of adopting in Illinois each of the OSS and facilities performance measurements and related standards/benchmarks that SBC has agreed to implement in Texas as a result of the Texas collaborative process (which is outlined in Attachment 1 to this Order). This review will identify the differences, if any, between the underlying legacy systems and equipment, including computer, manual and data generating systems and equipment, in Texas and Illinois which may make it economically or technically infeasible to implement certain agreed to performance measurements and/or related standards/benchmarks in Illinois. If no such differences are identified for a particular measurement or standard/benchmark, SBC/Ameritech will implement that performance measurement or standard/benchmark in Illinois. As of June 18, 1999, SBC had agreed to implement in Texas 122 such performance measurements and Agreed To Standards/Benchmarks, which include the performance measurements identified in a U.S. Department of Justice March 6, 1998 letter. The task force will include these measurements or standards/benchmarks within its review. The task force will also review the remedies agreed to in the Texas collaborative process (which are outlined in~~

~~Attachment 2 to this Order) to determine whether it is appropriate to implement such remedies in Illinois considering any relevant differences between Texas and Illinois.~~

~~3. Within 90 days following the Merger Closing Date, in conjunction with such task force, SBC/Ameritech will work with the Commission Staff, CLECs, and any other interested parties in a collaborative process to develop the initial performance measurements, standards/benchmarks, and remedies to be implemented in Illinois. SBC/Ameritech will meet with the collaborative participants on a regular basis to review the status of implementing each of the agreed to performance measurements, Agreed To Standards/Benchmarks, and/or remedies in Illinois. Such review will include either:~~

~~1. the timeline for implementing the performance measure, associated standard/benchmark, and remedy in Illinois; or~~

~~2. an explanation of why SBC/Ameritech contend it is not economically and/or technically feasible to implement either the performance measure, standard/benchmark or remedy in Illinois, in which case SBC/Ameritech would discuss any substitute measure(s), associated standard(s)/ benchmark(s), and/or remedy(ies) that would be appropriate.~~

~~4. Within 150 days following the Merger Closing Date, the task force will complete its initial review of performance measurements/standards/benchmarks/remedies with the collaborative participants.~~

~~5. Beginning 120 days following the Merger Closing Date and completing within 210 days following the Merger Closing Date, SBC/Ameritech will implement in Illinois (subject to any required Commission approval, which will be timely sought), each of the Agreed To Standards/Benchmarks that they determine are economically and technically feasible to implement. Implementation will occur on a rolling basis as each Agreed to Standard/Benchmark is tested and becomes operationally ready and will fully apply to both resale and facilities, where applicable, when implemented. If SBC/Ameritech determine that it is not economically or technically feasible to implement one or more Agreed To Standards/Benchmarks in Illinois within 210 days following the Merger Closing Date, they agree to implement such Agreed To Standards/Benchmarks as soon as it is economically or technically feasible to do so.~~

~~6. Within 300 days following the Merger Closing Date, Ameritech Illinois will implement in Illinois at least 79 of the 122 performance measurements and related standards/benchmarks. Ameritech Illinois will not raise economic or technical feasibility as an excuse for noncompliance with this commitment. Within 310 days following the Merger Closing Date, SBC/Ameritech will file a letter in this docket and serve such letter upon all CLECs with whom Ameritech~~

~~Illinois has an approved interconnection agreement attesting whether or not Ameritech Illinois has met this commitment. Such attestation is subject to review by the Commission. If SBC/Ameritech attest that they did not, or the Commission finds that they did not implement in Illinois at least 79 of the 122 performance measurements and related standards/benchmarks within of 300 days following the Merger Closing Date, SBC/Ameritech will make a payment of $30 million, as follows:~~

~~a. $26.25 million, as payments to CLECs providing end-user service within Ameritech Illinois' service area as of the date 300 days following the Merger Closing Date as follows:~~

~~A. A CLEC's Access Lines, for each CLEC, shall be its total number of access lines in service, including, without limitation, residence access lines, business access lines and end-user trunks, and ISDN lines, whether resold or not, measured as of the date 300 days following the Merger Closing Date, within Ameritech Illinois' current service area. Each CLEC that desires to receive any of the $26.25 million in payments must provide to the Commission Staff, no later than 330 days following the Merger Closing Date, a report identifying the number of such lines and trunks for that CLEC. Such report shall separately identify: i) the number of resold Ameritech Illinois access lines; ii) the number of unbundled loops purchased from Ameritech Illinois; and iii) all other such lines and trunks in service within Ameritech Illinois' current service area. Each CLEC submitting such a report will certify to the Commission Staff the accuracy of such report. The Commission Staff will notify each qualifying CLEC of its pro-rata share of the $26.25 million. Thirty days after the date of such notice, the Commission Staff will provide notice to SBC/Ameritech as to the appropriate disbursement of the $26.25 million. Within 60 days of receiving this notice from the Commission Staff, Ameritech Illinois will issue checks totaling $26.25 million made payable to each qualifying CLEC for the disbursement amounts listed in Staff's notice to Ameritech Illinois.~~

~~B. Total CLEC Access Lines shall be the sum of A. above for all qualifying CLECs submitting a timely report.~~

~~C. A CLEC's Pro-Rata Share shall be the ratio of A. above for that CLEC, divided by B.~~

~~D. Each affected CLEC within Ameritech Illinois' current service~~

area shall receive a payment equal to $26.25 million multiplied by the CLEC's Pro-Rata Share; and

b. $3.75 million to the Community Technology Fund described below.

7. If Ameritech/Illinois reports that it has met the commitments as provided and that is disputed, the Commission may issue an order to resolve that dispute and may set forth appropriate time frames.
8. For each Agreed to Standard/Benchmark to be implemented in Illinois that has an SBC agreed-upon remedy in Texas, SBC/Ameritech will discuss with the collaborative participants the proposed remedy to be attached to such Agreed to Standard/Benchmark in Illinois. After SBC/Ameritech implement an Agreed To Standard/Benchmark in Illinois, they will also implement (subject to any required Commission approval, which will be timely sought) any remedy to be associated with such Agreed To Standard/Benchmark consistent with the approach used in the Texas collaborative process. If the collaborative participants agree, SBC/Ameritech will refrain from implementing a particular remedy. Regardless of whether or not SBC agrees to remedies (*e.g.*, damages, assessments, and credits) associated with one or more Agreed To Standards/Benchmarks in the Texas collaborative, the Illinois collaborative process is not precluded from considering any proposed remedy or remedies.

9. If any participant in the collaborative process disputes SBC/Ameritech's determination that it is not economically or technically feasible to implement a particular Agreed To Standard/Benchmark in Illinois, either at all or within the 210 day time period, the collaborative participants will collaborate to resolve such dispute in the collaborative process. If any such dispute cannot be resolved through the collaborative process, any participant may ask the Commission to resolve such dispute. In any such dispute that may arise before the Commission, SBC/Ameritech retain the burden of proving to the Commission that it is not economically or technically feasible to implement an Agreed To Standard/Benchmark in Illinois.

10. Ameritech Illinois will provide a report to the Commission Staff on the results of its performance measurements on a quarterly basis, beginning the first full calendar quarter in which Ameritech Illinois has at least one full month of data for one or more performance measurements, and will report with respect to transactions affecting Illinois CLECs relative to their provision of service to end users in Illinois. If it is not economically or technically feasible, as discussed in the collaborative process, for Ameritech Illinois to report transactions on that basis, reporting will be done either on an Ameritech-wide or SBC-wide basis as reasonably determined by Ameritech Illinois after consulting with Commission Staff. Performance measurement reports will be provided to CLECs in conformance with each CLEC's

~~interconnection agreement and will be made available electronically if so requested.~~

~~11. For a minimum of one year following the Merger Closing Date, and thereafter on an as-needed basis as determined by Staff, participants in the collaborative process will collaborate to implement any additions, deletions, or changes to the performance measurements, standards/benchmarks, and remedies that are implemented by SBC/Ameritech in Illinois. Any participant may propose such addition, deletion, or change based upon experience with such implemented performance measurements, standards/benchmarks, remedies, or any other factor. If a dispute over any such addition, deletion, or change cannot be resolved through the collaborative process, any participant may ask the Commission to resolve such dispute. The participant proposing the addition, deletion, or change retains the burden of proving that such addition, deletion, or change should be adopted in Illinois.~~

(33) no, later than seven (7) days after the entry of a final Order the Joint Applicants should notify the Commission, pursuant to the provisions of Section 10-112 of the PUA that the terms, conditions and requirements set out above are accepted and will be obeyed.

VII. Findings and Ordering Paragraphs

The Commission, having considered the entire record herein and being fully advised in the premises, is of the opinion and finds that:

(1) Illinois Bell Telephone Company d/b/a Ameritech Illinois is a telecommunications carrier certified to provide local exchange and intraMSA interexchange services in Illinois; Ameritech Illinois does provide such services and provides both competitive and noncompetitive telecommunications services;

(2) Joint Applicants request approval of a “reorganization” of Ameritech Illinois that would result from a business combination of SBC Communications Inc. and Ameritech Corporation, two Delaware corporations and holding companies; if that business combination is completed, Ameritech Corporation would become a wholly-owned first-tier subsidiary of SBC Communications Inc. and Ameritech Illinois would remain a wholly-owned subsidiary of Ameritech Corporation;

(3) the Commission has jurisdiction over the parties hereto and the subject matter hereof;

(4) the findings of fact and conclusions of law set forth in the prefatory portion of this Order are supported by the record herein and are hereby adopted

as findings of fact and conclusions of law;

~~(9)~~(5) with the adoption of the conditions set forth herein, the proposed reorganization will not adversely affect the ability of Ameritech Illinois to perform its duties under the Illinois Public Utilities Act;

(6) with the adoption of and compliance with the conditions set forth herein, the Joint Applicants will satisfy the provisions in Section 7-204(b) (I) - (7), as follows;

(I) the proposed reorganization will not diminish Ameritech Illinois' ability to provide adequate, reliable, efficient, safe and least cost service;

(II) the proposed reorganization will not result in the unjustified subsidization of non-utility activities by Ameritech Illinois or its customers;

(III) costs and facilities are and will be fairly and reasonably allocated between utility and non-utility activities in such a manner that the Commission can identify those costs and facilities which are properly included by Ameritech Illinois for ratemaking purposes;

(IV) the proposed reorganization will not significantly impair Ameritech Illinois' ability to raise necessary capital on reasonable terms or to maintain a reasonable capital structure;

(V) Ameritech Illinois will remain subject to all applicable laws, regulations, rules, decisions and policies governing the regulation of Illinois public utilities;

(VI) the proposed reorganization is not likely to have a significant adverse effect on competition in those markets over which the Commission has jurisdiction; and

(VII) the proposed reorganization is not likely to result in any adverse rate impacts on retail customers;

(7) each of the conditions set forth herein is necessary to satisfy the requirements of Section 7-204;

(8) the provisions of Section 7-204(c) are being applied to the reorganization, so that 50% of the net merger-related savings as previously defined herein, allocable to Illinois, and to be allocated to the merged company's customers in accordance with the determination set forth in the prefatory portion of this Order;

(9) if the Joint Applicants do not comply with the conditions set forth herein, the Commission will impose the maximum penalty provided by law, with a penalty cap of $90 million annually;

~~(8)~~(10) the materials submitted by the parties in this proceeding on a proprietary basis or for which proprietary treatment was requested are hereby considered proprietary and should continue to be accorded such treatment;

~~(9)~~(11) any petitions, objections or motions in this proceeding that have not been specifically disposed of should be disposed of in a manner consistent with the Commission's conclusions herein.

IT IS THEREFORE ORDERED, that the proposed reorganization of Ameritech Illinois, as set forth in the verified Joint Petition filed in this proceeding, should be, and hereby is, approved, subject to the conditions set forth in Findings (7) (8) (9), and (33).

IT IS FURTHER ORDERED that any materials submitted in this proceeding for which proprietary treatment was requested shall be accorded such treatment.

IT IS FURTHER ORDERED that any petitions, objections or motions made in this proceeding and not otherwise specifically disposed of herein are hereby disposed of in a manner consistent with the conclusions contained herein.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

DATED August 10, 1999
BRIEFS ON EXCEPTIONS DUE: August 17, 1999

Mark L. Goldstein,
Eve Moran,
Hearing Examiners